
(2002) 08 SC CK 0101

In the Supreme Court Of India

Case No : Civil Appeal 3466 of 1991

Temjenkaba and Others

APPELLANT

Vs

Temjenwati and Others

RESPONDENT

Date of Decision : 14-08-2002

Acts Referred:

Constitution of India, 1950 — Article 371A
Limitation Act, 1963 — Section 3, 30

Citation : (2003) 1 CALLT 31 : (2002) 8 JT 45 : (2002) 10 SCC 597

Hon'ble Judges : V. N. Khare, J; Shivaraj V. Patil, J; Ashok Bhan, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. The appellants herein are the residents of village Dibui in the state of Nagaland. They claimed themselves to be owners of suit land having title which was declared by Ao Tribal council by a judgment and order dated 16.1.1953. It was alleged that the defendants have encroached upon their land and cultivated the said land despite the objection raised by the appellants. Subsequently, the defendants started erecting huts and under such circumstances the appellants brought a suit for declaration of their rights to the land in dispute and recovery of possession from the defendants, who are the residents of village Waranmung represented by Shri Temjenwati and others. The defendants contested the suit and contended that they have a title to the land and, therefore, they are in lawful possession of the land in question. Initially, the trial court decreed the suit. However, on appeal by the respondents, the decree of the trial court was set aside and the case was remanded to the trial court for deciding the suit afresh. On remand, the trial court dismissed the suit and one of the grounds on which the suit was dismissed was that the suit was barred by limitation. Aggrieved, the plaintiff respondents preferred an appeal before the High Court. The High Court by a reasoned judgment dismissed the appeal. It is against the said judgment of the High Court, the appellants are in appeal before us.

2. Learned counsel appearing for the appellants, inter alia, urged that, the Indian Limitation Act, 1963 is not applicable to the state of Nagaland and, therefore, the suit could not have been dismissed on the ground of limitation, that the suit filed by the appellants was required to be decided in terms of section 3 of the Naga Hills Jhumland Regulation, 1946 and in that event the suit filed by the appellants herein was well within limitation and that, section 30 of the Limitation Act, 1963 was not attracted in the present case. Learned counsel appearing for the respondents contested the submissions advanced on behalf of the appellants.

3. Coming to the first question, it was urged that in view of Article 371A of the Constitution of India, the Act of parliament cannot be extended to the state of Nagaland if it related to administration of civil and criminal justice involving Naga customary law unless legislative assembly of Nagaland by resolution resolves to extend the same and since the legislative assembly of Nagaland has not passed any resolution for extending the Limitation Act, 1963 to Nagaland, the said Act is not applicable to the state of Nagaland.

4. Article 371A of the Constitution of India provided thus :

"371-A. Special provision with respect to the state of Nagaland (1)
Notwithstanding anything in this Constitution:

(a) no act of parliament, in respect of

(i) religious or social practices of the Nagas,

(ii) Naga customary law and procedure,

(iii) Administration of civil and criminal justice involving decisions according to Naga customary law.

(iv) Ownership and transfer of land and its resources shall apply to the state of Nagaland unless the legislative assembly of Nagaland by a resolution so decides;

(b)-(d)..... .."

5. Limitation Act 1963 is based on a public policy. It only limits the time after which the suit or other proceedings cannot be maintained in a court of justice. In other words, the right of a party cannot be enforced through a court of law after the period of limitation provided in the act expires. The Limitation Act has been made applicable to administration of civil justice which does not involve decision according to Naga customary law. In other words justice is not required to render decision according to Naga customary law. Moreover, the customary law of Nagaland does not provide for any period of limitation for administration of civil action has to be brought within the period of limitation, as provided under Indian Limitation Act, 1963.

6. It was then urged that since section 3 of Naga Hills Jhumland Regulation, 1946 provides for limitation for bringing any action in a court of law within a period of 30 years, therefore, the suit brought by the plaintiff-appellant was well

within time. This argument has also no merit. Section 3 of the Naga Hill Jhumland Regulation speaks of jhum cycle and provides that customary right to Jhumland thereunder could be acquired if the same was enjoyed for a period of 30 years. Thus, section 3 of the regulation provides prescription for acquisition of right in a property and not period of limitation for bringing any action in civil court. It does not deal with the administration of civil justice and, therefore, the same has no application in the present case. Lastly, it was urged that since Indian Limitation Act, 1908 was not applicable in the state of Nagaland, which was repealed by Limitation Act, 1963, section 30 of the Limitation Act, 1963 has no application and the appropriate period of limitation would be 12 years for bringing action in civil court, this argument also has no merit. It is not disputed that the Indian Limitation Act, 1908 was not applicable in the state of Nagaland which was repealed by the Limitation Act, 1963. Section 30 of the Limitation Act, 1963 runs as under:

"30. Provision for suits, etc. for which the prescribed period is shorter than the period prescribed by the Indian Limitation Act. 1908 - Notwithstanding anything contained in this Act

(a) any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908 [9 of 1908], may be instituted within a period of seven years next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act. 1908, whichever period expires earlier,

(b)"

7. Since Indian Limitation Act, 1908 was not applicable in the state of Nagaland, therefore, it may be taken that the Limitation Act, 1963 prescribes shorter period of limitation for bringing a suit. Section 30(a) is attracted in a case for having prescribed a shorter period than what was available earlier when no period of limitation was prescribed at all. In Syed Yousuf Yarkhan and Others Vs. Syed Mohammed Yarkhan and Others, it was held that as Indian Limitation Act, 1908 was not applicable to the state of Hyderabad and when the new law of limitation was applied, it was held, that u/s 30 of the Limitation Act, 1963 the suit ought to have been filed within five years of the commencement of the act, i.e. from 1.1.64 and the suit having not filed within that period, the same was barred by limitation. Since, in the present case the suit was required to be filed within 7 years from 1.1.64 and the same having not filed within that period, the suit filed by the appellant was barred by limitation.

For the aforesaid reasons, we find no merit in this appeal. The appeal is accordingly dismissed. No costs.