

(1939) 12 BOM CK 0012
In the Bombay High Court
Case No : Second Appeal No. 618 of 1937

The City Municipality

APPELLANT

Vs

Nusserwanji Hormusji Madon

RESPONDENT

Date of Decision : 20-12-1939

Acts Referred:

Bombay Municipal Boroughs Act, 1925 — Section 206

Citation : AIR 1940 Bom 252 : (1940) 42 BOMLR 491

Hon'ble Judges : Kania, J

Bench : Single Bench

Judgement

Kania, J.—This is a second appeal from the judgment of the District Judge at Jalgaon. The plaintiffs (respondents) filed this suit against the appellant to recover inter alia the sum of Rs. 666-12-0. It appears that the defendant-Municipality had recovered certain taxes. The plaintiffs along with other persons living within the municipal limits of the town paid the taxes. One of the tax-payers then filed a suit and obtained a declaration that the tax levied by the Municipality was illegal. Thereupon the plaintiffs filed this suit to recover the amount on the ground that the tax was illegally levied. In the plaint it was stated that the plaintiffs came to know about the illegality of the said tax on December 1, 1931. In the trial Court issues as to whether the tax was illegal or not were raised. It was also contended by the defendant that this sum of Rs. 666-12-0 which was paid off in 1929 could not be recovered as the claim was time-barred. At the hearing all issues except the question of limitation were given up. Both the lower Courts held that Article 96 of the Indian Limitation Act applied, and as the mistake became known on December 1, 1931, allowed the plaintiffs' claim. In the appeal here it is first contended that u/s 206 of the Bombay Municipal Boroughs Act the act of the Municipality in imposing the tax was one purported to have been done in pursuance of that Act. If so, the claim in respect of that Act should, as provided by Section 206, be made within six months from the date of the act complained of. In support of the contention that not only an act which falls within the Act but one which is purported to be done under the Act is

covered by the Section the appellant relied on *Parvateppa Mallappa Hubli Vs. The Hubli Municipality*, . In my opinion it is not necessary to decide this point.

2. The contention of the respondents that Article 96 of the Indian Limitation Act applies is unsound. The claim in the plaint is based on the fact that the levy of the tax was illegal. The recovery of such payment falls under Article 62 of the Indian Limitation Act. In *Suryajirao Ganpatrao Jahagirdar Vs. Sidhanath Dhonddeo Garud*, the Court of Wards representing the estate of the minor jahagirdar served a notice on the plaintiffs to pay a higher assessment. Nothing happened for four years. Thereafter the Collector on behalf of the Court of Wards, u/s 153 of the Bombay Land Revenue Code, issued a notice asking the plaintiffs to pay the arrears of increased rent and threatened to forfeit the holdings in case of non-payment. The plaintiffs paid the amount under protest and brought a suit to recover the amount so paid. It was held that Article 62 of the Indian Limitation Act would govern a case of this type when an illegal demand was made. To the same effect it was held in *Secretary of State for India v. Major Hughes* ILR (1913) 38 Bom. 293. In that case taxes were levied by the cantonment authorities and payment was made under protest. When the suit was filed to recover the amount on the ground that the levy was illegal, Article 62 was held applicable.

3. On behalf of the respondents it was strenuously urged that they came to know of the mistake on December 1, 1931. They relied on *Tofa Lal Dass v. Syed Moinuddin Mirza* ILR (1924) Pat. 448 in support of that contention. This case does not help the respondents. The first statement of law found in that case is that in giving effect to the statute of limitation if two articles limiting the period for bringing a suit are wide enough to include the same cause of action and neither of them can be said to apply more specifically than the other, that which keeps alive rather than that which bars the right to sue should generally and apart from other equitable considerations be preferred. This was accepted as correct by our Court in *Kasturchand Okaji Marwadi Vs. Hari Govind Wagle*, . The further judgment in *Toja Lal Das v. Syed Moinuddin Mirza* does not help the respondents because it is clearly pointed out at p. 458 of the report that payment in that case was made on a mistaken valuation of the property. Towards the close of the judgment it was expressly pointed out that no case was suggested that the excess payment was made under illegal compulsion. The important point to be considered is that Article 96 of the Indian Limitation Act applies when the cause of action is founded on mistake. It is common knowledge that a mistake of law does not give a cause of action to a party. It may be that in addition to a mistake of law the particular circumstances and facts show that the mistaken interpretation as applied to the individual case gave rise to a mistake of fact. In these circumstances it is possible that there can be a cause of action based on a mistake of fact. But generally a mistake of law which is applicable to all citizens is not and cannot itself form the basis of a cause of action. This distinction- has been clearly pointed out in *A.M. Appavoo Chettiar Vs. The South Indian Railway Company and Another*, in the following words (p. 271) :-

In the present case the mistake of law is a mistake as to the general law in British India-a law which is applicable to the petitioner exactly in the same way as to all other citizens in British India. There is no fact peculiar to the plaintiff, not can it be said that, at the time of the consignment of goods, there was any special or private right peculiar to the plaintiff as distinguished from any other citizen. The right of the plaintiff is a general right, that is, a right which he possesses in common with every other citizen in British India...A right of that kind could not have been intended by Lord Westbury...as being cases of mistake as to private rights.

Section s 20 and 21 of the Indian Contract Act show that a mistake of fact gives rise to a cause of action but a mistake of law cannot be the basis of a suit. In my opinion, therefore, the lower Courts erred in holding that Article 96 of the Indian Limitation Act was applicable to the case. As I have pointed out, Article 62 of the Indian Limitation Act, according to authorities of this Court, is applicable. The plaintiffs' suit in respect of Rs. 666-12-0 fails. The decree of the trial Court is varied so as to run as follows : Defendant do pay the plaintiffs Rs. 1,605-6-6 with proportionate costs and future interest at six per cent, per annum from the date of the suit till judgment. The respondents must pay the costs of this appeal and of the first appellate Court.