
(2003) 03 P&H CK 0109

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 890 of 2003

Tika and Others

APPELLANT

Vs

Ram Chander and Others

RESPONDENT

Date of Decision : 24-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 14 Rule 2, Order 14 Rule 3, 100

Citation : (2003) 3 CivCC 691 : (2003) 135 PLR 631 : (2003) 3 RCR(Civil) 541

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : Harender Hooda, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This is plaintiff-appellants' appeal filed u/s 100 of Code of Civil Procedure, 1908 (for brevity, "the Code"), challenging the concurrent findings of facts recorded by both the Courts below holding that the suit filed by the plaintiff-appellant was barred by limitation and they were estopped from filing that suit. The argument that no issue on the aforementioned two findings concerning limitation and estoppel was framed, was rejected by both the courts below opining that the parties in their pleadings have specifically raised the pleas and have led evidence being fully alive to the aforementioned Issues. The views of the appellate Court on the question of limitation read as under:-

"12. Furthermore, it cannot be disputed that the defendants did not allege specifically that the suit was time barred. But even then the Court can adjudicate upon the same. The plaintiffs have challenged the decree passed in the years 1983 and 1985 in the year 1994 i.e. after about 11 and 09 years respectively. It was for them to show that how that suit was in time. They have nowhere alleged in the plaint how that suit was within time. They have only raised plea of cause of action and not the limitation. It was for the plaintiffs to prove that the suit was within time. Even if the defendants have not set-aside such a defence it is for the

court to see whether the suit is within time or not. As per Section 3 of the Limitation Act, 1963 (in short Limitation Act) the court is to see whether the suit is within time or not. For ready reference Sub-section (1) of Section 3 of the Limitation Act is reproduced as under :-

"BAR OF LIMITATION.- (i) Subject to the provisions contained in Sections 4 to 24 (inclusive) every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence."

From the bare perusal of this provision, it is clear that even if no defence is set up the court is supposed to give opinion about this fact. My these views are also fortified by the opinion of our Hon"ble High Court expressed in Anup Singh v. Bunchi Singh 1997(1) R.C.R. 26): 1996(3) L.J.R. 237 (Case law cited by defence counsel) wherein it is opined that the plea of limitation is legal and can be raised even at the time of the second appeal. It is also opined therein that the duty is cast upon the courts to look into this matter."

On the question of estoppel also, there were specific pleadings raised by the defendant-respondents. The views of the appellate Court on this aspect read as under :-

"11. xx xx xx xx In the present case the defendants specifically alleged that the plaintiffs were estopped from filing the suit and that they have suppressed the material facts from the court. It is also alleged that the decree dated 3.3.1982 passed in their (plaintiffs) favour was set-aside. It is also alleged that the suit was not maintainable in the present form. It shows that the pleas of estoppel and maintainability were specifically raised by them. The plaintiffs filed the replication but even then they did not dispute this fact. So, it cannot be presumed that there were no pleadings about this fact. Even if no issue was framed, it cannot be presumed that a finding qua this fact cannot be given any evidence cannot be looked into. Our Hon"ble High Court has clearly opined in Ram Niwas and Another Vs. Rakesh Kumar and Others, (case law cited by learned counsel for the defendants) that where the parties had led the evidence and contested the point hotly the court could adjudicate upon that matter even if there were no pleadings and issue. Whereas in the present case the pleadings are there. The plaintiffs have miserably failed to show that any prejudice has been caused to them by not framing the issues. They were well aware about the pleadings of the defendants. It has nowhere come on the file that the defendants waived their plea. When issues were framed it was nowhere mentioned that if any plea was left uncovered then it could be presumed that the same had been waived by the parties. Had it been so then it would have been a different matter."

2. The appellate Court has also concluded that the pleadings of the defendant-respondents were proved by adducing evidence on the aforementioned question and even in the cross-examination of the witnesses produced by the plaintiff-appellants, the questions with regard to limitation as well as estoppel were put to

them. Therefore, there was no element of surprise for the plaintiff-appellants as it is a finding of fact recorded by both the court below that the parties were fully aware about the controversy and led their evidence on that basis. Even otherwise, it is evident that the decrees dated 23.5.1983, 25.3.1985 and 3.3.1982 were sought to be challenged by filing the suit in 1994. It is well-settled by a catena of Judgments of the Supreme Court that once the parties go on trial being alive to the controversy between them even then, in the absence of a specific issue having been framed, the court is not precluded from recording a finding of fact on that controversy provided that the parties have pleaded the case and have led their evidence. In this regard, reference be made to the judgments of the Supreme Court in *Nedunuri Kameswaramma Vs. Sampati Subba Rao*, , *Kunju Kesavan Vs. M.M. Philip I.C.S. and Others*, and *Savitri Pandey Vs. Prem Chandra Pandey*, . The view of their Lordships in *Nedunuri Kameswaramma*'s case (supra) read as under :-

"No doubt, no issue was framed, and the one, which was framed, could have been more elaborate, but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions, but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mis-trial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on the is narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion."

3. Having heard the learned counsel for the appellants at a considerable length, I do not find any legal infirmity in the findings of facts recorded by both the Courts below. The findings are based on pleadings and evidence of the parties and it cannot be claimed that a reasonable man would not record those findings. It is well-settled that even on re-appreciation of evidence if this Court reaches a conclusion different than the one recorded by both the Courts below, such a course is not permissible under law. Therefore, I do not find any ground to interfere. The appeal is without merit and is thus liable to be dismissed.

For the reasons recorded above, the appeal fails and the same is dismissed.