

(2000) 01 BOM CK 0007

In the Bombay High Court

Case No : Notice of Motion No. 399 of 1999 in Suit No. 3225 of 1997

Union of India

APPELLANT

Vs

Suresh Jayantilal Thanawala and others

RESPONDENT

Date of Decision : 17-01-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11(d)
Limitation Act, 1963 — Article 112, 10, 12, 14, 16
Maharashtra Land Revenue Code, 1966 — Section 20

Citation : (2000) 2 ALLMR 261 : (2000) 3 BomCR 69 : (2000) 3 MhLj 9

Hon'ble Judges : D.K. Deshmukh, J

Bench : Single Bench

Advocate : Zaiwala and S.R. Rajguru, for the Appellant; Y.S. Jahagirdar and Snehal Shah, instructed by . Purnanand and Co., G.P. Rege and Behram Shroff, for the Respondent

Judgement

D.K. Deshmukh, J.—This is a notice of motion taken out by the defendants Nos. 1 & 2 for rejection of the plaint filed by the plaintiff under Order VII, Rule 11(d) of the Code of Civil Procedure.

2. The case of the defendants Nos. 1 & 2 is that the principal prayer that is made in the suit is for a declaration that the order dated 22-6-1995 passed by the Collector, Bombay in Case No. 1/95 and the order dated 12-6-1996 passed by the State Government are illegal, bad in law and null and void. According to the plaintiff, the order dated 22-6-1995 was passed by the Collector pursuant to a direction issued by the State Government by order dated 2-3-1995 directing the collector, Bombay to hold an inquiry under sub-section (2) of section 20 of the Maharashtra Land Revenue Code to find out whether the defendant No. 1 has title to the land. Pursuant to that reference, the Collector, Bombay made an order accepting the claim made by the defendant No. 1 that he is the owner of the land and rejecting the claim of the Salt Department, who is the plaintiff in the present suit, claiming title to the land. According to the plaintiff, under the provisions of section 20 of Maharashtra Land Revenue Code a civil suit can be instituted in a

Civil Court claiming a relief which inconsistent with the order made by the Collector u/s 20 within a period of one year from the date on which the order has been passed by the Collector and in case there is an appeal, within the period of one year from the date on which the Appellate Authority decides the appeal. According to the defendants Nos. 1 & 2 the present suit has been instituted beyond one year. In the present case the Collector made an order dated 26-2-1995, revision filed by the plaintiff before the State Government against that order was decided on 12-6-1996 and therefore according to the defendants Nos. 1 & 2 the present suit could have been instituted within a period of one year from 12-6-1996. However, the present suit has been instituted on 16-7-1997. Therefore, it is barred by the provisions of section 20 of the Maharashtra Land Revenue Code. There is some dispute between the parties as to whether the date of institution is 16-7-1997 or 10-9-1997. However, that controversy is not of much significance, because, according to the submission of the learned Counsel for the defendants Nos. 1 & 2, even if it is taken that the suit is instituted in July, 1997, it is barred by period of limitation and therefore, according to the defendants Nos. 1 & 2 as the suit appears from the averments made in the plaint itself to be barred by the period of limitation the plaint is liable to be rejected under Rule 11 (d) of Order VII of Civil Procedure Code.

3. On the other hand, the learned Counsel appearing for the plaintiff made three submissions (i) that the order made u/s 20 by the Collector is contrary to the judgment of this Court and therefore the order is null and void and therefore the period of limitation prescribed by section 20 of the Maharashtra Land Revenue Code does not apply, (ii) The second submission is that the principal relief that is claimed in the suit is a declaration of the title of the plaintiff in the land and therefore, according to the learned Counsel, it is the period prescribed by Article 112 in the Schedule of the Limitation Act would apply and not the period of limitation prescribed by section 20 of the Maharashtra Land Revenue Code, (iii) The third and the last submission is that by virtue of provisions of section 20 of the Maharashtra Land Revenue Code, provisions of sections 4 to 24 of the Limitation Act are made applicable to a suit of the present nature and therefore in the submission of the learned Counsel section 5 of the Limitation Act would be applicable and therefore the Court has the power to condone the delay in instituting the suit.

4. Now in the light of these rival submissions the record of the case is perused, it becomes clear that there existed a dispute between the plaintiff and the defendants Nos. 1 & 2. Defendants Nos. 1 & 2 had filed a revision before the State Government challenging the order made by the Deputy Director of Land Records, Konkan Division, Bombay in relation to the ownership of the land. That revision was decided by the State Government by its order dated 2-3-1995 setting aside the order made by the Deputy Director of Land Records dated 3-1-1995 and sent the case to the Collector with a direction to make an inquiry under sub-section (2) of section 20 of the Land Revenue Code and to make an order in relation to the ownership of the suit land. Pursuant to the order of the

State Government, an inquiry was held by the Collector in which the plaintiff participated and ultimately the Collector accepted the claim made by the defendant No. 1 that he is the owner of the land and claim made by the plaintiff that it is the plaintiff who is the owner of the land was rejected. The operative part of Order of the Collector reads as under :-

"1. The claim of Shri Suresh J. Thanawala is accepted.

2. Claim of Salt Department is rejected."

It is common ground before me that the plaintiff preferred revision before the State Government against the order of the Collector and that revision was rejected by the State Government and the order made by the Collector was confirmed. The plaintiff filed this suit on 16-7-1997. Prayer Clauses (a) to (g) of the plaint reads as under :-

(a) delay if any in filing the aforesaid suit be condoned.

(b) It may be declared by this Hon''ble Court that the plaintiffs are the owners of the suit land bearing S. No. 89/C.T.S. No. 2 situated at village Mandale, Dhananjaya Salt Works, Bombay, admeasuring about 88 acres and 18.3/4 gunthas and that the defendants have no right, title or interests in the same.

(c) It may also be declared by this Hon''ble Court that the orders of the City Survey Enquiry Officer dated 24-3-1988, dated 22-6-1996 of the Collector, Bombay Suburban District, Bandra, Bombay, in Case No. 1/95 and orders dated 12-6-1996 passed by the Revenue Minister Mr. Narayan Rane of the defendant No. 4 are illegal, bad in law and null and void.

(d) It may be declared by this Hon''ble Court that the sale of suit land by defendant No. 1 and 2 of the suit land bearing S- No. 89/C.T.S. No. 2 at village, Mandale, Dhananjaya Salt Works, Bombay, admeasuring about 88 acres and 18.3/4 gunthas is null and void, illegal and collusive and that this Hon''ble Court be pleased to set aside the said sale.

(e) The defendants by themselves, their servant and agents be refrained by a permanent order and injunction of this Hon''ble Court from entering upon the suit land bearing Survey No. 89/C.T.S. No. 2 at village Mandale, Dhananjaya Salt Works, Bombay and from doing any construction on the said land and from dealing with, disposing of and transferring their rights in the suit land bearing Survey No. 89/C.T.S- No. 2 at Dhananjaya Salt Works, Mandale, Mumbai in favour of a third party.

(f) The defendants Nos. 1 to 3 also be ordered to surrender and hand over vacant and peaceful possession of the suit land bearing Survey No. 89/C.T.S. No. 2 of village Mandale, Mumbai to the plaintiffs by removing materials, things and articles on the same.

(g) The defendant No. 4 be ordered by a mandatory order to mutate/enter the suit land bearing Survey No. 89/C.T.S. No. 2 at village Mandale at Dhananjaya

Salt Works, Bombay, admeasuring 88 acres and 18.3/4 Gunthas in the name of the plaintiffs in all, the revenue records, namely 7/12 extracts, property register card etc. as holders thereof."

Perusal of these prayers Clause shows that by prayer (b) the plaintiffs are seeking a declaration that they are the owners of the suit land and that the defendants have no rights, title or interest in that land. By prayer Clause (c) the plaintiffs are claiming a declaration that the order made by the Collector and the order made by the State Government in Revision are illegal, bad in law and mitt and void. By prayer Clause (d) a declaration is sought that the sale of the suit land effected by the defendants Nos. 1 & 2 is null and void. It is thus clear that the principal relief that is claimed in the suit is a declaration in favour of the plaintiffs that they are the owners of the land and that the defendants Nos. 1 & 2 are not the owners. Therefore, the question that needs to be considered is whether the period of limitation prescribed by section 20 would be applicable or the period of limitation given in the Limitation Act would be applicable. Section 20 of the Maharashtra Land Revenue Code reads as under:-

"(1) All public roads, lanes and paths, the bridges, ditches, dikes and fences, on or beside, the same, the bed of the sea and of harbours and creeks below the high water mark, and or rivers, streams, nallas, lakes and tanks and all canals and water courses, and all standing and flowing water, and all lands wherever situated, which are not the property of persons legally capable of holding property, and except in so far as any rights of such persons may be established in or over the same, and except as may be otherwise provided in any law for the time being in force and are and are hereby declared to be, with all rights in or over the same, or appertaining thereto, the property of the State Government and it shall be lawful for the Collector, subject to the orders of the Commissioner, to dispose of them in such manner as may be prescribed by the State Government in this behalf, subject always to the rights of way, any all other rights of the public or of individuals legally subsisting.

(2) Where any property or any right in or over any property is claimed by or on behalf of the Government or by any person as against the Government, it shall be lawful for the Collector or a survey officer, after formal inquiry of which due notice, has been given, to pass an order deciding the claim.

(3) An order passed by the Collector or survey officer under sub-section (1) or sub-section (2) shall be subject to one appeal and revision in accordance with the provisions of this Code.

(4) Any suit instituted in any Civil Court after the expiration of one year from the date of any order passed under sub-section (1) or sub-section (2) of, if appeal has been made against such order within the period of limitation, then from the date of any order passed by the appellate authority, shall be dismissed (though limitation has been not set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that in

the case of an order under sub-section (2) the plaintiff has had due notice of such order.

(5) Any person shall be deemed to have had due notice of any inquiry or order under this section if notice thereof has been given in accordance with rules made in this behalf by the State Government.

Perusal of the provisions of sub-section (4) of section 20 shows that if any suit is instituted in any Civil Court, the suit has to be instituted within a period of one year from the date of the first order or if there is an appeal within a period of one year from the date of the appellate order. What subsection (4) contemplates is that any suit instituted in any Civil Court. To my mind this phrase would mean any suit in which the relief which is inconsistent with the order passed by the Collector u/s 20 is claimed. Therefore, apart from the fact that in the present suit a declaration has been claimed that the order made by the Collector u/s 20 is illegal, even if that prayer had not been made for granting relief claimed by prayer Clause (b), the Court had to set aside or declare that the order of the Collector is illegal or null and void. In other words it is not possible to grant to the plaintiffs the relief claimed by prayer Clause (b) without touching the order passed by the Collector, because the relief claimed by prayer Clause (b) is clearly contrary or inconsistent with the order made by the Collector. Therefore, the period of limitation would be the period of limitation prescribed by sub-section (4) of section 20 of the Maharashtra Land Revenue Code. The position is further clear from the provisions of "sub-section (2) of section 29 of the Limitation Act, which reads as under :-

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."

It is clear from the sub-section (2) of section 29 that for the purpose of limitation, the Maharashtra Land Revenue Code would be a special or local law and section 20 of that law prescribed a period of limitation which is different from the period of limitation prescribed by schedule and therefore provisions of section 3 are made applicable as if such period is a period prescribed by the Schedule, and therefore, in my opinion, it is the provision of section 20 of the Maharashtra Land Revenue Code, which governs the period of limitation for instituting the present suit. So far as the submission of the learned Counsel for the plaintiff that because section 29 of the Limitation Act makes the provision of sections 4 to 24 applicable to a suit instituted under special or local law. Provisions of section 5 of the Limitation Act would be applicable and would empower the Court to condone the delay in instituting the suit, bare perusal of section 5 of the Limitation Act

would show that the submission has no substance, because section 5 is not applicable in case of suits, it is applicable only in case of appeals and the applications. By virtue of the provisions of sub-section (2) of section 29 of the Limitation Act, only such provisions of sections 4 to 24 of the Limitation Act would be applicable to a suit instituted under the local law as they relate to the suits, appeals or applications. In other words, if any provision of any of the sections from section 4 to section 24 applies to a suit then that provision is applicable to a suit instituted under local law. For example provisions of section 14 of the Limitation Act would apply to a suit instituted u/s 20, because section 14 applies to a suit. Provisions of section 5 do not apply to the institution of a suit under local law, because section 5 itself does not apply to a suit. Perusal of provisions of various sections of the Limitation Act makes it clear that the Legislature has made a clear distinction between a suit and an application and an appeal. There are some provisions which apply to suits and there are some provisions which apply only to appeals or applications. In my opinion, as section 5 of the Limitation Act does not apply to the institution of a suit, by virtue of the provisions of section 2 to section 29 it cannot be made applicable to a suit. The learned Counsel appearing for the plaintiff submitted that the order of the Collector is contrary to the judgment of this Court in the case of The Union of India (UOI) and Others Vs. Muhammad Masud Muhammad Mahsin Bhaiji and Others, . Firstly, even if it is assumed that the order of the Collector is contrary to the judgment of this Court that will not make the judgment *rum est*. Failure to follow the law laid down by the Court of record would make the judgment illegal and not *non est*. It is further to be seen here that the order of the Collector in the present case was made in June, 1995, whereas the Revision was decided by the State Government in June, 1996 and the case of Muhammed Masud referred to above was decided by this Court in September, 1996. Thus, the judgment of this Court in Muhammed Masud's case was not in existence when the Collector decided the matter as also when the Revision was decided and therefore, in my opinion, it cannot be said that there is failure on the part of the State Government or the Collector to follow the judgment laid down by this Court. To my mind, therefore, it is clear that the suit instituted by the plaintiff is barred by the period of limitation prescribed by section 20 of the Maharashtra Land Revenue Code and therefore the plaint filed by the plaintiff is liable to be rejected under the provisions of Rule 11(d) of Order VII of the Code of Civil Procedure.

The Notice of Motion is therefore disposed of accordingly.

At this stage the learned Counsel appearing for the plaintiff requests that the parties be directed to maintain status quo for a period of eight weeks from today. The request is opposed by the learned Counsel for the defendant. However, considering the facts and circumstances of the case that the plaint of the plaintiff has been rejected and the plaintiff has a remedy of appeal, it would be appropriate to direct the parties to maintain status quo as existing today in relation to the suit lands, for a period of eight weeks from today.

Certified copy expedited.

Parties to act on ordinary copy of the order duly authenticated by the Associate of the Court.

5. Notice of Motion disposed accordingly.