(2014) 04 BOM CK 0027

In the Bombay High Court

Case No : First Appeal No. 8 of 2008

Valentino S.I.F. Jose Francisco Rebello APPELLANT

Vs

State of Goa RESPONDENT

Date of Decision : 10-04-2014

Acts Referred:

General Clauses Act, 1897 — Section 3(66)
Limitation Act, 1963 — Section 10, 11, 12, 12, 12(1)

Citation : (2014) 6 ALLMR 92 : (2014) 5 BomCR 48

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

Advocate : S.G. Desai, Sr. Advocate and Bhaskar Mahatme, Advocate for the Appellant; Sagar Dhargalkr, A.G, Advocate for the Respondent

Judgement

Z.A. Haq, J.—The appeal arises out of the judgment and Decree passed by the Ad hoc District Judge, FTC-I, South Goa, Margao, in Civil Suit No. 160 of 2004 on 30.8.2007, by which the suit filed by the original plaintiff/respondent, is decreed. The relevant facts are as follows:

"The appellants/original defendants had initiated proceedings under Article 14(3) of the Goa, Daman and Diu Land Revenue Code, 1968, (hereinafter referred to as the Land Revenue Code, 1968''), before the Deputy Collector, praying that the holding under Survey No. 56/2 of Village Velim be re-surveyed and additional area admeasuring 227 square metres be amalgamated in the said survey holding and the area of the said holding be increased to 477 square metres. The learned Deputy Collector by the Order dated 24.10.2002, allowed the application filed by the appellants/original defendants."

2. The respondent/original plaintiff, challenged the above mentioned Order passed by the Deputy Collector by filing the civil suit as provided by the provisions under Article 14(4) of the Land Revenue Code, 1968. The learned trial Judge proceeded with the matter and after conducting the trial, by the impugned judgment, granted Decree to the respondent/original plaintiff.

3. Heard Shri S.G. Desai, learned Senior Counsel, assisted by Mr. Mahatme, learned Advocate, for the appellants and Shri Sagar Dhargalkar, learned Addl. Government Advocate for the respondent.

4. Shri Desai, the learned Senior Counsel has submitted that the civil suit filed by the respondent, could not have been entertained by the trial Court as the civil suit was filed beyond the period of one year as laid down under Article 14(4) of the Land Revenue Code of 1968 and, consequently, the suit has to be dismissed on the ground that it is barred by limitation. The learned Senior Counsel has submitted that the Order which was challenged in the civil suit is dated 24.10.2002 and the civil suit is filed on 24.10.2003 and in view of the definition of "year", as laid down in section 3(66) of the General Clauses Act, "one year" as laid down in Article 14(4) of the Land Revenue Code, 1968, has to be construed as British Calendar year. According to the appellants, the "one year" has to be calculated from 24.10.2002 till 23.10.2003 and the suit is filed on 24.10.2003 and, therefore, it was beyond the prescribed period of limitation. The learned Senior Counsel has submitted that the trial Court was under an obligation to dismiss the civil suit, in terms of the provisions of section 3 of the Limitation Act, 1963.

Shri Desai, learned Senior Counsel has submitted that the finding given by the learned trial Judge regarding title is also perverse and unsustainable in law. According to the appellant, the learned trial Judge has committed an error in setting aside the findings given by the Deputy Collector as the respondent-original plaintiff had not placed any material on the record and has not discharged the burden to prove its title. It is submitted that the burden lay on the respondent-original plaintiff to make out and establish a clear case for grant of the declaration regarding the title in respect of the suit property. To substantiate the submission, reliance is placed on the judgment in the case of Union of India (UOI) and Others Vs. Vasavi Co-op. Housing Society Ltd. and Others, particularly paragraph Nos. 15 to 19 and 24 of the above mentioned judgment. The appellants also took support from the provisions of section 105 of the Land Revenue Code of 1968 and submitted that an entry in the record of rights and the certified entry in the record of mutation, shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor. The submissions on behalf of the appellant is that statutory presumption could not have been wiped out or overruled without sufficient material being produced by the respondent-original plaintiff to substantiate its claim.

5. Shri Sagar Dhargalkar, learned Addl. Government Advocate for the respondent, has supported the judgment passed by the learned trial Judge. He has submitted that the day on which the Order was passed by the Deputy Collector i.e. 24.10.2002, has to be excluded while calculating the limitation as provided under section 12(1) of the Limitation Act, 1963 and, accordingly, the civil suit is filed within ''one year" and it cannot be dismissed on the ground that it is barred by limitation. In support of his submission, he has relied on the

judgment reported in Justiniano Augusto De Piedade Barreto Vs. Antonio Vicente Da Fonseca and Others, in the case of (Justiniano Augusto De Piedade Barreto v. Antonio vicente Da Fonseca & ors.), and the judgment reported in State of Goa Vs. Western Builders, in the case of (State of Goa v. Western Builders). The respondent-original plaintiff has relied on Article 14(1) of the Land Revenue Code, 1968, which reads as follows:

"14. Title of Government to lands, etc.- (1) All lands, public roads, lanes and paths and bridges, ditches, dikes and fences on or besides the same, the bed of the sea and of harbours and creeks below the high water mark, and of rivers, streams, nallas, lakes and tanks and all canals and water courses, and all standing and flowing water and all rights in or over the same or appertaining thereto which are not the property of any person are hereby declared to be the property of the Government subject to right of way and all other right public and individual legally subsisting.

Explanation:- In this section, "high water-mark" means the highest point reached by ordinary spring tides at any season of the year."

The learned Addl. Government Advocate has submitted that the learned trial Judge has rightly relied on Article 14(1) of the Land Revenue Code, 1968 to conclude that the appellant has not placed any material on record to prove his title over the suit property. The learned Addl. Government Advocate has pointed out that the appellant-original defendant had made the claim only on the basis of the sale-deed dated 16.1.1981 which is executed by the father of the appellant-defendant No. 1 and that sale-deed does not disclose the source of title of the father of the appellant-defendant No. 1. It is submitted that the appellant-defendant No. 1 cannot claim title on the basis of the sale-deed dated 16.1.1981 which, apparently, is an unreliable document as far as the title of the father of the appellant-defendant No. 1 and the title of the appellant-defendant No. 1 is concerned. The learned Addl. Government Advocate has prayed that the appeal be dismissed with costs.

6. In reply, Shri Desai, the learned Senior Counsel has submitted that the Land Revenue Code, 1968 is a complete Code in itself. He has further submitted that Article 14(4) of the Land Revenue Code, 1968, provides for the limitation of one year for filing the suit for challenging the order passed under Article 14(3) of the Land Revenue Code, 1968. It is submitted that Article 14(5) of the Land Revenue Code, 1968 lays down that if the suit is instituted in the Civil Court after the period of one year from the date of the Order passed under Article 14(3) of the Land Revenue Code, 1968 then it has to be dismissed though limitation has not been set up as a defence. The learned Senior Counsel has submitted that Article 188 of the Land Revenue Code, 1968, provides for the appeals that can be filed under the Land Revenue Code, 1968. The learned Senior Counsel has submitted that Article 189 of the Land Revenue Code, 1968, provides for the limitation for filing of the appeals. It is submitted that Article 195 of the Land Revenue Code, 1968, lays down that the provisions of sections 4, 5, 12 and 14 of the Limitation

Act, 1963, shall apply to the filing of appeals or applications for revision and review under the Land Revenue Code, 1968, and therefore, impliedly, the applicability of the provisions of sections 4, 5, 12 and 14 of the Limitation Act, 1963 are excluded to the civil suit filed as provided under Article 14(4) of the Land Revenue Code, 1968. In support of his submission, he has relied on the judgments reported in

"(i) Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, .

(ii) (2009)5 S.C.C. 791 in the case of (Commissioner of Customs and Central Excise v. Hongo India Private Limited & anr.) and

(iii) Smt. Lata Kamat Vs. Vilas, ."

7. I have heard the learned Advocates for the respective parties and have examined the records with their assistance. The following points arise for my consideration:

"(i) Whether the civil suit filed by the respondent-original plaintiff, is filed within the limitation prescribed?

(ii) Whether the finding given by the learned trial Judge on the issue of title, is proper?"

8. It is undisputed that the civil suit is filed in terms of the provisions of Article 14(4) of the Land Revenue Code, 1968, which provides the period of limitation as one year from the date of the Order passed under Article 14(3) of the Land Revenue Code, 1968. It is undisputed that the Civil suit is filed on 24.10.2003, the question is whether the date on which the Order is passed by the learned Deputy Collector i.e. 24.10.2002 has to be excluded while computing the period of limitation of one year as provided under Article 14(4) of the Land Revenue Code, 1968. The Limitation Act, 1963, applies to the proceedings before the Civil Court. Therefore section 12(1) ''of the Limitation Act, 1963, will come into play and the day from which the period off limitation has to be reckoned i.e. 24.10.2002 in the present case has to be excluded.

The submission made on behalf of the appellant that the Land Revenue Code, 1968, is a complete Code in itself and the provisions of Limitation Act, 1963, cannot be extended to enable the respondent-original plaintiff to avail the benefit of section 12(1) of the Limitation Act, 1963, cannot be accepted. Section 29(2) of the Limitation Act, 1963, lays down that 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 was 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 and only then, they cannot be resorted to. The learned Senior Counsel has not been able to point out any provision in the Land Revenue Code, 1968, which expressly excludes the applicability of sections 4 to 24 (inclusive) of the Limitation Act, 1963, to the civil suit filed. The submission made on behalf of the appellant that the respondent-original plaintiff could not have availed the benefit of section 12(1) of the Limitation Act, 1963, cannot be accepted. Similarly, the reliance placed on the provisions of Articles 188, 189 and 195 of the Land Revenue Code, 1968, is also misdirected. Article 189 of the Land Revenue Code, 1968, provides for the limitation for appeals filed under the Land Revenue Code, 1968.

Article 195 of the Code, lays down that the provisions of sections 4, 5, 12 and 14 of the Limitation Act, 1963, shall apply to the filing of appeals and applications for revision and review under the Land Revenue Code, 1968. It cannot be said by inference that as there is no such provision under the Land Revenue Code, 1968, making the provisions of sections 4, 5, 12 and 14 of the Limitation Act 1963, applicable to the filing of the civil suit as contemplated under Article 14(4) of the Land Revenue Code, 1968, the provisions of sections 4 to 24 (inclusive) are impliedly excluded from their applicability to the civil suits filed as per the provisions of Article 14(4) of the Land Revenue Code, 1968. If the submissions as made on behalf of the appellant in this matter is accepted, then it will amount to overlooking the mandate of section 29(2) of the Limitation Act, 1963.

9. The submissions made on behalf of the appellant that "one year" as laid down in Article 14(4) of the Land Revenue Code, 1968 has to be considered as "one year" reckoned according to the British Calendar as defined under section 3(66) of the General Clauses Act, 1897, cannot be accepted. The construing of "one year" as per the definition of "year" under section 3(66) of the General Clauses Act, 1897, cannot take away the right of the respondent-original plaintiff to avail the benefit of section 12(1) of the Limitation Act, 1963. Therefore, I hold that the civil suit filed by the respondent-original plaintiff is filed within one year and is within limitation as prescribed by the provisions of Article 14(4) of the Land Revenue Code, 1968.

10. The appellant had filed an application under Article 14(3) of the Land Revenue Code, 1968, praying that the holding under Survey No. 56/2 of Village Velim, be re-surveyed and additional area of 227 square metres should be amalgamated in the said survey holding. The appellant had made this claim on the basis of the sale-deed dated 16.1.1981 which was executed by the father of the appellant No. 1 in favour of the appellant No. 1 in respect of the property named "Musher" under survey No. 56/2. The father of the appellant No. 1 had sworn an affidavit in 1987, stating that he had sold the property "Musher" admeasuring 477 square metres to the appellant No. 1. The learned Deputy Collector relying on the sale-deed and the affidavit, had passed an Order and amalgamated the additional area admeasuring 227 square metres in the survey No. 56/2 of Village Velim and increased the area to 477 square metres.

The learned trial Judge has recorded that the above mentioned sale-deed dated

16.1.1981 did not show the area of land nor any plan was annexed to it. The learned trial Judge has observed that the above mentioned sale-deed did not disclose the source of title of the father of the appellant No. 1. The learned trial Judge has recorded that the boundaries mentioned in the sale-deed are as follows:

"....to the east partly by River Sal and small piece of Government land, west by River Sal, north by the property of Cruzito Caeiro and brothers and south by River Sal."

11. The provisions of Article 14(1) of the Land Revenue Code, 1968, lays down that all lands, public roads, lanes and paths and bridges, ditches, dikes and fences on or besides the same, the bed of the sea and of harbours and creeks below the high water mark, and of rivers, streams, nallas, lakes and tanks and all canals and water courses, and all standing and flowing water and all rights in or over the same or appertaining thereto: which are not the property of any person and are hereby declared to be the property of the Government subject to right of way and all other right public and individual legally subsisting.

(Emphasis supplied).

In the absence of any document to show the source of the title of the father of the appellant No. 1 and considering the description of the disputed property, it can be inferred as per the statutory presumption that the suit property is covered by the provisions of Article 14(1) of the Land Revenue Code, 1968. In this background, the burden was on the appellants to prove that the property which they are claiming is their property. Moreover, the survey Form III which is produced on the record showed that the area of land of survey No. 56/2 was 250 square metres and the learned trial Judge has properly considered this material on the record. The appellants have not been able to point out any document to show the title of the father of the appellant No. 1 which could have been validly transferred in favour of the appellant No. 1/appellants. It is clear that the learned trial Judge has properly appreciated the material on the record and the findings given by the learned trial Judge cannot be said to be suffering from any infirmity.

In view of this, the reliance placed on behalf of the appellants on the judgment in the case of Union of India & ors. (supra), is misdirected. The initial burden was on the appellants to show their title in respect of the land admeasuring 227 square metres and to rebut the statutory presumption under Article 14(1) of the Land Revenue Code, 1968. The appellants having failed to discharge their burden before the learned Deputy Collector, it cannot be said that the burden was on the respondent-original plaintiff who had filed the civil suit to prove that the respondent-original plaintiff is the owner of the land admeasuring 227 square metres.

In view of my findings recorded above, I am not considering the other judgments referred above.

The appeal is accordingly dismissed. The facts on record show that the appellants had made a claim which was unsustainable under Article 14(3) of the Land Revenue Code, 1968, and it has given rise to the civil suit. Therefore, the appellants are liable for costs quantified at Rs. 10,000/- payable to the respondent-original plaintiff.

