
(1966) 08 KL CK 0020
In the High Court Of Kerala
Case No : Second Appeal No. 1158 of 1962

Velayudhan Sukumaran and Others	Vs	APPELLANT
Narayana Pillai and Others		RESPONDENT

Date of Decision : 09-08-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1
Limitation Act, 1908 — Article 14, 142, 47

Citation : AIR 1967 Ker 162 : (1966) 10 KLJ 968

Hon'ble Judges : T.C. Raghavan, J

Bench : Single Bench

Advocate : P.C. Chacko and P. Krishnamoorthy, for the Appellant; S. Narayanan Potti, N.K. Varkey and N. Darmadan, for the Respondent

Final Decision : Allowed

Judgement

T.C. Raghavan, J.—The lower appellate court was obviously in error, when it held that Article 14 of the Limitation Act of 1908 applied to the case and not Article 47. Article 47 deals with a suit by a person hound by an order respecting the possession of immovable property made under the Code of Criminal Procedure etc., to recover the property comprised in such order; and the time prescribed is three years from the date of final order in the case. Obviously, this must apply to a case like this, which is to recover the properly comprised in an order u/s 145 of the Code of Criminal Procedure and where the criminal court held that the respondent was in possession.

2 Another ground on which the lower courts held that the suit was barred by limitation was by using the possession of the receiver appointed by the criminal court against the appellants. In other words, the lower courts held that since the appellants did not establish their possession within twelve years prior to the suit, excluding the period during which the receiver was in possession, the suit was barred. The criminal court held that the respondent was in possession; and it directed the receiver to hand over possession to the respondent. The receiver

was put in possession on 2nd June 1943 and he continued in possession till 18th January 1954, when he was directed to hand over possession to the respondent. What the lower courts did was to consider the period during which the receiver was in possession against the appellants to hold that they were not in possession within twelve years prior to suit.

3 This approach is patently wrong. The possession of the receiver must be taken to be possession of the successful party. The lower courts think that the successful party is the party who succeeded before the criminal court in obtaining an order that he was in possession at the time when the dispute started. The successful party is not the one who succeeded before the criminal court; he is the one who succeeds ultimately before the civil court. If so, it will be clear that the lower courts should not have used the period during which the receiver was in possession against the appellants.

4 I may now refer to the recent decision of the Supreme Court in *Ittyavira Mathai v. Varkey*, AIR 1964 SG 907 for both the propositions of law mentioned by me herein before. In that case the Supreme Court has said that Article 47 of the Limitation Act of 1908 applies to a case for recovery of possession after the criminal court has passed an order u/s 145 of the Code of Criminal Procedure. Again, in that case the criminal court held that the appellant before the Supreme Court was entitled to possession and consequently, the receiver handed over the property to him. This appears from paragraph 6 of the Supreme Court; and in paragraph 12 the Court says that the period during which the receiver was in possession must be tacked on to the possession of the respondent, who succeeded ultimately before the civil court. Therefore, the decision of the lower courts on the second aspect of the question of limitation is also wrong.

5. The patent error of the lower courts on this aspect will be brought out by an illustration. Suppose there is dispute between A and B; and the property is put in the possession of a receiver by a criminal court - The receiver continues in possession for over twelve years. (In the present case the receiver had been in possession for a little less than eleven years, though normally the receiver's possession would not have been so long). The criminal court finds that A is entitled to possession; and the receiver gives possession to him. In the view of the lower courts, B's suit for recovery of possession will be barred, even if the suit is brought the very day on which the receiver gives possession or the criminal court disposes of the matter.

6. Having recorded an adverse finding against the appellants on the question of limitation, the lower appellate court (I think the trial too) has considered the evidence in the case rather cursorily and wrongly. To point out only one instance. I may refer to the discussion of the lower appellate court regarding Exs. D13, D14 and D15. They are documents after Exs. D5 of 1111, under which the appellants claim title and possession regarding the suit property. Evidently, Exs. D 13, D 14 and D 15 cannot have any relevancy in considering the question of the appellants' possession. Therefore, I am satisfied that the appeal requires

fresh consideration by the lower appellate court.

7. The second appeal is allowed, the decision of the lower appellate court is set aside and the appeal is remitted to it for fresh disposal. As I have already held that the suit is not barred by limitation, the lower appellants court win consider only the rest of the case on the evidence on record. The appellants will get half costs before me from the respondents: and the costs of the appeal will be provided in the judgment that will hereafter be passed by the lower appellate court. Half the court fee paid on the memorandum of second appeal will also be refunded to the appellants.