
(1968) 02 MP CK 0016

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 2 of 1964

Vishwanath Singh Behari Singh Thakur

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 13-02-1968

Acts Referred:

Limitation Act, 1908 — Article 115, 3, 9

Citation : AIR 1968 MP 212 : (1970) ILR (MP) 787 : (1968) JLJ 512 : (1968) 13 MPLJ 392 : (1968) MPLJ 392

Hon'ble Judges : P.V. Dixit, C.J.;A.P. Sen, J

Bench : Division Bench

Advocate : G.P. Patanker, for the Appellant; K.K. Dube, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.

This Letters Patent appeal from a decision of Khan J. arises out of a suit filed by the appellant against the State of Madhya Pradesh for compensation for a breach of a forest contract taken by the appellant from the respondent-State.

On 13th December 1950 a contract was concluded between the appellant and the respondent-State under which the appellant was given a right to fell and removes trees in a forest coupe in Sheopur district for a period ending on 30th June 1952. The appellant worked the forest area for some time until 16th June 1951. The Conservator of Forests imposed a penalty on the appellant for indulging in illegal felling and on 16th June 1951 made an order prohibiting the appellant from working the coupe till he had paid the penalty amount. The appellant then preferred an appeal before the Chief Conservator of Forests against the order of the Conservator of Forests imposing penalty on him. In that appeal he prayed that the order imposing penalty on him be set aside and he be permitted to fell further 2307 trees. The Chief Conservator of Forests set aside in 1955 the order imposing penalty but did not grant the appellant's prayer for

felling of additional trees.

Thereafter, the appellant filed a suit in the Court of Civil Judge, Class I, Morena, on 23rd June 1958 claiming compensation for breach of Contract. In the plaint it was averred that the cause of action arose on 28th November 1955 when the Chief Conservator of Forests refused to permit the plaintiff to fell the remaining trees standing in the coupe and afterwards on 29th May 1957 when the plaintiff's further appeal to the State Government was dismissed. The Civil Judge dismissed the plaintiff's suit on the ground of limitation as well as on merits. In appeal, the Additional District Judge, Morena, held that the plaintiff's suit was within time but dismissed it on merits. In the second Appeal which the appellant then preferred, Khan J. held that the cause of action arose on 16th June 1951 when the plaintiff was stopped from working the coupe and not on the dates alleged by the plaintiff and that the plaintiff's suit filed on 23rd June 1958 was patently barred under Article 115 of the Indian Limitation Act, 1908. Accordingly, the plaintiff's appeal was dismissed.

Shri Patankar, learned counsel appearing for the appellant, did not dispute before us the fact that it was on 16th June 1951 that the Conservator of Forests stopped the appellant from working the forest area till he had paid the amount of penalty. It was also not disputed that the suit was governed by Article 115 of the Limitation Act, 1908. Learned counsel, however, argued that as the appellant had preferred an appeal against the order of the Conservator of Forests imposing penalty and as that order was set aside in appeal by the Chief Conservator of Forests in 1955, the cause of action for filing a suit for compensation arose when after the decision in appeal of the Chief Conservator of Forests the plaintiff was again prohibited from working the forest area. It was said that the suit was filed within three years of the date on which the Chief Conservator of Forests decided the plaintiff's appeal. To support his argument learned counsel relied on AIR 1943 178 (Nagpur) and Midnapore Zemindary Co. Ltd. Vs. State of West Bengal and Others, .

Having heard learned counsel for the parties, we have reached the conclusion that this appeal must be dismissed. In regard to limitation, the fundamental principle is that limitation always implies an existing cause of action and that unless the cause of action for a suit has arisen, limitation for such a suit cannot begin to run. Now, Section 9 of the Limitation Act lays down that where, once time has begun to run, no subsequent disability or inability to sue stops it. It is well settled that all questions of limitation must be decided with reference to the Limitation Act and it is not permissible for any Court to travel beyond the provisions of the Limitation Act and import equitable considerations in deciding questions of limitation.

These principles have in no way been departed from in the cases relied on by learned counsel for the appellant. In AIR 1943 178 (Nagpur) it has been held that Section 9 of the Limitation Act applies to cases where the cause of action continues to exist and not to those where it is cancelled by subsequent events.

That was a case in which one of the mortgaged fields was sold for the recovery of arrears of revenue by the Deputy Commissioner. As soon as the mortgagees learnt of the sale, they applied to the Deputy Commissioner for setting aside the sale and succeeded in having it set aside. The order of the Deputy Commissioner was confirmed by the Commissioner of the Division, but eventually the Revenue Member confirmed the sale on 22nd April 1933. As under the prevailing law the sale of the mortgaged field for realization of arrears of land revenue was free from encumbrances, the mortgage claim against the field was extinguished and so the mortgagees lost a part of the mortgage security.

Thereupon, the mortgagees filed a suit to enforce the mortgage against the mortgagors and other persons claiming a personal decree against the mortgagors and their representatives. The mortgagees alleged that as it was on 22nd April 1933 that the Revenue Member held that the sale ought to be confirmed, it was on that date that the security was lost to them and, therefore, their claim for a personal decree against the mortgagors and their representatives was within time. The learned Judges of the Nagpur High Court, after pointing out that Section 9 applies to cases where the cause of action continues and not to those cases where it is cancelled by subsequent events, proceeded to observe:--

"In the case before us, though the sale was confirmed on the 31st August 1931 by the revenue Court the plaintiffs bona fide took proceedings for setting aside the sale and succeeded in two Courts. As soon as they succeeded in the proceeding that they initiated for setting aside the sale their cause of action for suit disappeared or was cancelled. It remained cancelled till 22nd April 1933 when the highest revenue authority held that the sale ought not to be set aside. If the plaintiffs had instituted a suit on any date between the date on which they succeeded in having the sale set aside and the date on which the highest revenue authority held that the sale could not be set aside, their suit would have been held to be not tenable as their cause of action had disappeared on account of the order that they themselves had obtained from the Deputy Commissioner and the Commissioner."

On this reasoning, they held that the mortgagees' claim for a personal decree based as it was on the cause of action afforded to them by their being deprived of their security as a consequence of the default of the mortgagors was within time when the suit was instituted on 16th July 1938, the cause of action having arisen on 22nd April 1933. This was, therefore, a case where there was cancellation of a cause of action and accrual of a fresh cause of action in favour of the plaintiffs on the decision of the Revenue Member.

In the Midnapore Zemindary Co. Ltd. Vs. State of West Bengal and Others, , a Special Bench of the Calcutta High Court answering one of the questions referred to it said that apart from statute, there can be suspension of limitation or extension of prescribed periods of limitation. It was however, pointed out that cases of satisfaction or cancellation of the cause of action may, in appropriate

instances, be dealt with as cases of new or fresh causes of action falling under particular Articles of the Indian Limitation Act, rendering unnecessary application of the theory of suspension of limitation.

Here, learned counsel for the appellant did not contend that this was such a peculiar case that in the special circumstances of it, quite apart from the Limitation Act, it should be held that there was suspension of limitation when the appellant preferred an appeal before the Chief Conservator of Forests against the order of the Conservator of Forests imposing a penalty. What he contended was that a new or a fresh cause of action in favour of the plaintiff accrued on the decision in appeal of the Chief Conservator of Forests and that the cause of action which accrued to the appellant on 16th June 1951 was cancelled when the appellant preferred the appeal that he did before the Chief Conservator of Forests.

We are unable to accede to this contention. Clause 18 of the forest contract concluded between the appellant and the State provided that if the appellant-contractor was aggrieved in any way by any Construction put by the Conservator of Forests on any term of the agreement or by any order passed by him, then the contractor had a right of appeal to the Chief Conservator of Forests whose decision would be final. This provision about appeal was not any provision for any arbitration in any dispute arising between the appellant-contractor and the State designating the Chief Conservator of Forests as the arbitrator and making his decision final and binding on the parties. It cannot, therefore, be contended that when the appellant filed an appeal before the Chief Conservator of Forests against the order of penalty, proceedings in the nature of arbitration were initiated before the Chief Conservator of Forests for a settlement of the dispute between him and the State arising on account of the action of the Conservator of Forests imposing a penalty on the appellant and stopping him from working the forest area from 16th June 1951 and that consequently cause of action which accrued on 16th June 1951 was cancelled or suspended. That appeal was not any proceedings falling within the following observations of Sadasiva Ayyar J. in *Muthu Korakkai Chetty v. Madar Animal* ILR 43 Mad 185 = (AIR 1920 Mad 1) (FB), and quoted in AIR 1943 178 (Nagpur) :--

"Whenever proceedings are being conducted between the parties bona fide in order to have their mutual rights and obligations in respect of a matter finally settled, the cause of action for an application or for a suit the relief claimable wherein follows naturally on the result of such proceedings, should be held to arise only on the date when those proceedings finally settle such rights and liabilities."

The appeal proceedings before the Chief Conservator of Forests were not any proceedings for final settlement of the dispute with regard to compensation payable to the appellant and the appellant's claim for compensation did not in any way depend on the result of the appeal. It is also noteworthy that in the appeal preferred before the Chief Conservator of Forests the appellant only

claimed the relief for setting aside the order of penalty and for being allowed to fell the remaining standing trees in the coupe. He never prayed that he should be awarded compensation for not being allowed to work the forest coupe from 16th June 1951. That being so, he cannot urge that the right to claim compensation for not being allowed to work the forest area from 16th June 1951 accrued only after the date of the decision in appeal of the Chief Conservator of Forests.

It was open to the appellant to have straightway filed a suit for compensation when he was stopped from working the coupe on 16th June 1951 without filing an appeal against the order of the Conservator of Forests before the Chief Conservator of Forests. If he had filed such a suit, it could not have been held to be premature on the ground that he should have first exercised the right of appeal. He could have filed a suit for compensation even during the pendency of the appeal. There was nothing in Clause 18 of the forest contract or in any term thereof preventing him from filing a suit for compensation without exercising his right of appeal or even during the pendency of the appeal. Clause 18 merely gave to the appellant a right of appeal. It did not provide that the mere filing of the appeal would have the effect of suspending operation of the order appealed against until the decision of the appeal.

In our judgment, the present case falls within the principle laid down by the Supreme Court in *Sita Ram Goel Vs. The Municipal Board, Kanpur and Others*, . In that case a municipal Overseer was dismissed by a resolution, dated 5th March 1951, of the Municipal Board, Kanpur, which was communicated to him on 19th March, 1951. His appeal to the Government was dismissed on 7th April 1952 and the Government's order was communicated to him on 8th April, 1952. On 8th December 1952 the Overseer filed a suit for compensation for wrongful dismissal. The Supreme Court held that the suit was barred by limitation rejecting the Overseer's contention that the cause of action accrued to him on 8th April 1952 when the order dismissing his appeal was communicated to him by the Government. It was observed by the Supreme Court

"One condition of the validity of the order of dismissal made by the Board is that the special resolution in that behalf should be supported by not less than 2/3rd members constituting the Board. Once that condition is fulfilled there is nothing more to be done by the Board and the only right which then accrues to the officer thus dealt with by the Board is to appeal to the State Government within 30 days of the communication of that order to him. He may choose to exercise this right of appeal or without adopting that procedure he may straightway challenge the validity of the resolution on any of the ground available to him in law, e. g., the non-observance of the principles of natural justice and the like. There is nothing in the provisions of Section 58(1) to prevent him from doing so and if without exercising this right of appeal which is given to him by the statute he filed a suit in the Civil Court to establish the ultra vires or the illegal character of such resolution it could not be urged that such a suit was premature, he not having exhausted the remedies given to him under the statute

***** Section 58(2) merely prescribes the powers which the State Government may exercise in the matter of the appeal which has been filed by the employee against the order of the Board. The mere filing of an appeal has not the effect of holding the order of the Board in abeyance or postponing the effect thereof until the decision of the appeal. Such a construction would on the other hand involve that even though a special resolution was passed by the Board dismissing or removing the employee he would continue to function as such and draw his salary pending the decision of his appeal, once he filed an appeal to the State Government as prescribed. We do not see any words in Section 58 (1) and (2) which would suspend the operation of the order passed by the Board or render it ineffective by reason of the filing or the pendency of the appeal."

The ratio decidendi of this decision of the Supreme Court is that if a cause of action arises on the passing of an order by an authority, then that cause of action is not suspended or cancelled by the mere filing of an appeal against that order, unless there is something in the provision regulating the appeal suspending the order appealed against or rendering it ineffective by reason of the filing or the pendency of the appeal. In our opinion, this principle is applicable here also and it must be held that the cause of the action which accrued to the appellant on 16th June 1951 was in no way cancelled or discharged when he preferred an appeal before the Chief Conservator of Forests and there was no revival of cause of action when the Chief Conservator of Forests decided the appeal.

In our judgment, the cause of action in favour of the plaintiff-appellant for claiming compensation accrued on 16th June, 1951 when he was stopped by the Conservator of Forests from working the coupe. That being so, the suit filed on 23rd June 1958 was plainly barred by time. The learned Single Judge, therefore, reached the right conclusion when he dismissed the appeal holding that the appellant's suit was barred by time.

The result is that this appeal fails and is dismissed with costs.