Sawai Singhai Nirmal Chand vs Union Of India on 24 September, 1965

Equivalent citations: 1966 AIR 1068, 1966 SCR (1) 986, AIR 1966 SUPREME COURT 1068, 1966 JABLJ 509, 1966 (1) SC WR 321, 1966 MPLJ 395, 1966 2 ANDHLT 21, 1966 MAH LJ 371, 1966 SCD 511, 1967 (1) SCJ 267, 1966 (1) SCR 986

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Bench: P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, J.C. Shah, S.M. Sikri

PETITIONER:
SAWAI SINGHAI NIRMAL CHAND

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT:
24/09/1965

BENCH:
GAJENDRAGADKAR, P.B. (CJ)
BENCH:
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
HIDAYATULLAH, M.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1966 AIR 1068 1966 SCR (1) 986
CITATOR INFO :
F 1977 SC 148 (7)
R 1984 SC1043 (5)

ACT:
Code of Civil Procedure (Act 5 of 1908), s. 80 and O. 21, r. 63-Claim suit against Government--Notice, if necessary

HEADNOTE:
In execution of an order to:- restitution of money, the

respondent Union of India-applied for attachment and sale of certain immovable ,properties as belonging to the person from whom the. money was claimed. The properties were ordered to be attached, and the appellant claiming ownership of the properties, objected to the attachment under O. 21, r. 58 .of the Civil Procedure Code. 1908. The objection was over-ruled and his application was dismissed. Therefore, he filed ;I Suit tinder O. 21, r. 63 and before filing the suit gave notice to the respondentt under s. 80 of the Code. If s. 80 applied to the suit and the period covered by the notice could be taken into account the suit was within time but if s. 80 did not apply and the period of notice could not be taken into account, the suit would be barred by time. -Die trial court and High ,Court answered the question against the appellant and dismissed the suit .its barred by time.

In appeal to this Court.

HELD : The view that suits tinder O. 21, r. 63 did not attract the provisions of s. 80 is inconsistent with the plain, categorical .1nd unambiguous words used by it. [1993 F]

The material words used in s, 80 are wide and unambiguous; they .,ire "express, explicit and mandatory" and it would be difficult to except front their operation any proceeding which can be regarded as a suit against the government. The proceedings which the aggrieved party ,commences by virtue of O. 21, r. 63 are intended to be a suit. They are commenced by the presentation of a plaint as required by s. 26 of the Code, and art. 11 of the Limitition Act, 1908, under which the plea of limitation was raised in the present, case, shows that the proceeding was a suit. Such a proceeding under O. 21, r. 63 cannot he regarded as either a continuation of the objection proceedings under r. 58, or as a form of ,in appeal against the order passed in them, because the scope of the suit is different from and wider than that of the investigation under r. 58. In fact, it is the order made in the investigation under O. 21, r. 58 that is the cause of action of the suit under r. 63. The object or main purpose of the notice is to give previous intimation to the government about the nature of the claim which a party wants to make against it. 'But that does not affect the interpretation of the plain words of s. 80 [989 E, G; 991 C, E, 992 D]

Phul Kumari v. Ghanshyam Mishra (1907) I.L.R. 35 Cal. 202 (P.C.) and Amar Nath Dogra v. Union of India, [1963] 1 S.C.R. 657, explained.

Bhagchand Dagadusa v. Secretary of State for India in Council and others. 54 I.A. 338, applied.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 928 of 1963.

Appeal from the judgment and decree dated March 14, 1961 of the Madhya Pradesh High Court in First Appeal No. 57 of 959. Bishan Narain, S. N. Prasad and f. B. Dadachanji, for the apellant.

N. D. Karkhanis and R. N. Sachthey, for the respondent. The Judgment of the Court was delivered by Gajendragadkar, C.J. The short question of law which arises in this appeal is whether a suit filed in pursuance of O. 21 r. 63 of the Code of Civil Procedure attracts the, provisions of s.80 of the Code. This point arises in this way. One Phool Chand, the predecessor-in-title of the appellant Sawai Singhai Nirmal Chand, instituted a suit against the respondent, the Union of India, in the Court of the Second Additional District Judge, Jabalpur, and obtained a decree on 25-4-1951 for Rs. 24,234-14-0 and proportionate costs with interest @ 4% per annum. The respondent challenged the said decree by preferring an appeal in the High Court. Pending the appeal, the respondent deposited the decretal amount of Rs. 31.849-9-9. On December 14, 1952, phool Chand withdrew Rs. 28.032-12-0 out of the said amount after furnishing due security in that behalf. Ultimately, the respondent's appeal was partly allowed on June 26, 1954, and the decretal amount was reduced to Rs. 10,971-15-6. In the result, the total decretal amount due to the decree- holder Phool Chand came to Rs. 12,691-13-6; and that meant that he had withdrawn Rs. 15,340-14-8 in excess of his legitimate dues.

On September 4. 1954, the respondent applied for restitution of the said amount and claimed interest thereon. The Second Additional District Judge, Jabalpur, allowed the said application, and in execution of it, the respondent sought for the recovery of the said amount by attachment and sale of certain immovable properties of Phool Chand, mentioned in the application. These properties were accordingly ordered to be attached. But, meanwhile, they had been sold by Phool Chand to the appellant by a registered sale deed executed on January 9, 1953. That is why the appellant objected to the said attachment under O.21 r. 58 of the Code. but his objection was over-ruled and his application was dismissed by the Second Additional District Judge on April 16, 1957. It is this order which has led to the present suit under 0. 21 r. 63 of the code.

Before the appellant filed the present suit on June 23,1958 in the Court of the First Additional District Judge, Jabalpur, he gave notice to the respondent under s. 80 of the Code on April, 12, 1958. In the said suit, he claimed a declaration that the properties in question could not be attached and sold inasmuch as the title in respect of the said properties vested in him by virtue of a valid sale deed executed in his favour by Phool Chand. The appellant also claimed an injunction restraining the respondent from attaching and selling the said properties.

In defence, the respondent raised a plea of limitation. It is common ground that the period of limitation prescribed for a suit under O. 21 r. 63 by Article 11 of the Limitation Act is one year from the date of the order under O. 21. r.

58. The respondent urged that s. 80 of the Code did not apply to the present suit; and so, the period covered by the notice served by the appellant on the respondent could not be excluded for the purpose of calculating limitation in the present case. It is not disputed that if s. 80 applies to the

present suit and the period covered by the notice can be taken into account, the suit is within time. It is also not disputed that if s. 80 does not apply to the present suit and the period of the notice cannot be taken into account, the suit is barred by time; and so, at the preliminary stage, the only question which fell to be determined on the pleadings of the parties was whether s. 80 applies to the present suit. Both the learned trial Judge and the High Court of Madhya Pradesh, Jabalpur, have answered this question against the appellant, and the suit has, therefore, been dismissed as barred by time. It is against this decision that the appellant has come to this Court with a certificate granted by the said High Court. 'Mat is how the only point which calls for our decision in the present appeal is whether s. 80 of the Code applies to a suit instituted in pursuance of the provisions of O. 21 r. 63. Let us begin by referring to the provisions of O. 21 rr. 58 and 63. O. 21 r. 58 deals with the investigation of claims to, and objections to attachment of, attached properties. It is under this rule that a person whose property is wrongfully attached in execution of a decree passed against another, is entitled to object to the said attachment. On such an application being made, a summary enquiry follows and the attachment is either raised or is not raised and the objection to attachment is allowed or is not allowed according as the Court trying the application is satisfied that the objector is or is not justified in objecting to the attachment. After the final order is passed on-- way or the other as a result of the investigation made in such proceedings, r. 63 comes into operation. It provides that where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive. It is thus plain that where an order is passed in objection proceedings commencing with r. 58, it would be final subject to the result of the suit which a party aggrieved by such order may ,institute; and that means that if a party is aggrieved by an order passed in these proceedings, he can have the said order set aside or reversed by bringing a suit as provided by r. 63 itself and such a suit has to be filed within one year from the date of the impugned order. That is the nature of the suit which the appellant has brought in the present case. In considering the question whether this suit falls within the purview of s. 80 of the Code, it is necessary to read the relevant portion of s. 80 itself; it provides, inter alia, that no suit shall be instituted against the Government until the expiration of two months next after notice in writing has been delivered to or left at the office of the authorities specified by clauses (a), (b) &

(c); and it further provides that such notice shall state the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

It would be noticed that the material words used in s. 80 are wide and unambiguous; they are "express, explicit and mandatory", and it would be difficult to except from their operation any proceeding which can be regarded as a suit against the Government. While dealing with the applicability of s. 80, the question to ask is: is it a suit against the Government or not? If it is, then s. 80 by the very force of its words must apply. We have already referred to the provisions of O. 21 r. 63. In terms, the said rule provides that the order passed in the investigation proceedings shall be conclusive, subject to the result of a suit which the aggrieved party may institute. So, there can be no doubt that the proceedings which the aggrieved party commences by virtue of the pro- visions of O. 21 r. 63, are intended to be a suit. In fact, the present proceedings have commenced with the-presentation of a plaint as required by s. 26 of the Code; and the very article under which the plea of

limitation is raised against the appellant shows that it is plea in respect of the institution of a suit beyond the period of limitation. It is thus plain that what we are dealing with is a suit and that it is a suit against the Union of India. Therefore, on a fair and reasonable construction of s. 80. we do not see how it is possible to hold that a suit filed under O. 21 r. 63 can be taken out of the provisions of s. 80 of the Code. If we were to accede to the argument urged before us by Mr. Karkhanis for the respondent, we would, in substance, have to add certain words of exception in s. 80 it-self, and that plainly is not permissible. It is, however, said that the suit under O. 21 r. 63 is a continuation of attachment proceedings and as such, cannot be regarded as a suit proper which is included within the purview of s. 80. In support of the assumption that a suit filed under O. 21 r. 63 is a continuation of attachment proceedings, reliance is placed on the decision of the Privy Council in Phul Kumari v. Ghanshyam Misra(1). In that case, the Privy Council was dealing with the question of the proper court-fees to be paid for a suit under s. 283 of the Code which was then in force, and which corresponds to 0. 21 r. 63 of the present Code. Article 17 of Sch. It of the Court Fees Act (No. VII of 1870) with which the Privy Council was dealing was expressly made to apply to "Plaint or Memorandum of Appeal in each of the folllowing suits: 1 To alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent, or of any Revenue Court"; and the Privy Council had to examine the question as to whether a suit filed under s. 283 for the purpose of the relevant article prescribing the, court-fees to be paid on the plaint was, or was not, a suit to alter or set aside a summary decision or order of any civil court. In answering(, this question in the affirmative, the Privy Council observed that the difference between the words used in the plaint in the case before it and the words used in the relevant article of the Court Fees Act. was merely verbal. In the plaint, the plaintiff had "categorically asked from the Court the several decrees which she had asked from the Subordinate Judge, and which the Subordinate Judge had refused." In other words, the plaint did not, in terms, ask for the setting aside of the said decrees, or reversing them. The Privy Council did not attach any importance to this verbal difference and held that in substance, the plaint was one filed with the object of getting a summary decision of the court set aside as contemplated by s. 283. It is in that connection that the Privy Council made the observation on which reliance has been placed by the courts below. Says the Privy Council, "Misted by the form of the action directed by s. 283, both parties have treated the action as if it were not simply a form of appeal, but as if it were unrelated to any decree forming the cause of action." In other words, the effect of the (1) I.L.R. 35 Cal. 202 observations made by the Privy Council is just this that when a suit is brought under s. 283, it is no more than a suit to set aside a summary decision by which the plaintiff feels aggrieved. It would be noticed that the question which had been raised before the Privy Council had reference to the payment of proper court fees; and the decision of the Privy Council and its observations must, therefore, be read in the light of the article which the Privy Council applied. It would, we think, be unreasonable to extend the said observations to the Present case and treat them as enunciating a proposition of law that for all purposes, a suit brought under O. 21 r. 63 is either a continuation of the objection proceedings, or is a form of an appeal against the order passed in them. In our opinion, this extension is not justified, because the Privy Council could not have intended to lay down such a broad proposition. Therefore, the argument that the present suit is outside the purview of s. 80 of the Code because it is a continuation of the attachment proceedings, must be rejected. In this connection, we ought to bear in mind that the scope of the enquiry under O. 21 r. 58 is very limited, and is confined to questions of possession as therein indicated while suit brought under O. 21 r. 63. would be concerned not only with the question of possession, but also with the question of

title. Thus the scope of the Suit is very different from and wider than that of the investigation under O. 21 r. 58. In fact. it is the order made in the said investigation that is the cause of action of the suit under O. 21 r. 63. Therefore, it would be, impossible to hold that such a suit is outside the purview of s. 90 of the Code.

It is next contended that no notice can be said to be required for suits under O. 21 r. 63, because the principal object for encting s. 80 is absent in the case of such suits. The argument is that the requirement about the statutory notice prescribed by s. 80 proceeds on the basis that it is desirable lo give such notice to afford the Government an opportunity to consider whether the claim made against it should be settled or not. The Legislature thought that if the Government is informed beforehand about civil actions intended to be taken against it, it may in some cases avoid unnecessary litigation by accepting the claims if it is satisfied that the claims are well-founded. In the case of i suit under O. 21 r. 63, there is hardly any need to give Such a notice, because the Government was already a party in the investigation proceedings and it knows what the appellants, case was in regard to the attachment sought to be levied at its instance. Since the respondent knows all about the claim of the appellant in regard to the properties in question, it is futile and unnecessary to require that a notice should be given to the respondent before a suit can be filed by the appellant under O. 21 r. 6 3.

In support of this argument, Mr. Karkhanis has relied on a

-decision of this Court in Amar Nath Dogra v. Union of India(1). In that, case, one of the questions which the Court had to consider was whether, if a suit against the Government is withdrawn and a subsequent suit is filed substantially (in the same cause of action, the notice given by the plaintiff prior the institution of the first suit could be said to satisfy the requirements of s.80 ofthe Code in respect ofthe second suit; and this question was answered in the affirmative. while upholding the appealant's ,contention that the first notice should serve to meet the requirements of s. 80, this Court, no doubt, observed that the main purpose of giving the notice isto give previous intimation to the 'Government about the nature of the claim which a party wants to make against it. But we do not see how the purpose, or the reason for requiring the notice can alter the effect of the plain words used in s. 80. What this Court held in the case of Amar Nath Dogra(1) was that the notice given before the institution of the first suit can be said to be a good notice even for the second suit; and that means that the notice was necessary to be given under s. 80. but it was not necessary to repeat it in the circumstances of the case.

It is significant that in a large majority of cases, tbhe plea that the Government raises is that notice is necessary and it is generally contended that the notice being defective in one particular or another, makes the suit incompetent; and in dealing with such pleas, the courts have naturally sought to interpret the notices somewhat liberally and have sometimes observed that in, enforcing the provisions of s. 80, commonsense and sense of propriety ,should determine the issue. It is very unusual for the Government to contend that in a suit brought against it, no notice is required tinder -s. 80. It is plain that such a plea has been raised by the respondent in the present case, because it helps the respondent to defeat the appellant's claim on the ground of limitation. In any case the contention based on the object or purpose of the notice can hardly assist us in interpreting the plain

words of s. 80. (1) [1963] 1 S.C.R. 657.

It will be recalled that prior to the decision of the Privy Council in Bhagchand Dagadusa & Others v. Secretary of State for India in Council and others(1), there was a sharp difference of opinion among the Indian High Courts on the question as to whether s. 80 applied to suits where injunction was claimed. The Privy Council held that s. 80 applied "to all forms of suit and whatever the relief sought,, including a suit for an injunction." In dealing with the question about the construction of s. 80, the Privy Council took notice of the fact that some of the decisions which attempted to exclude from the purview of s. 80 suits for injunction, were influenced by the "assumption as to the practical objects with which it was framed". They also pro- ceeded on the basis that s. 80 was a rule of procedure and that any construction which may lead to injustice is one which ought not be adopted, since it would be repugnant to the notion of justice. Having noticed these grounds on which an attempt was judicially made to except from the purview of s. 80 suits, for instance, in which injunction was claimed, Viscount Sumner, who spoke for the Privy Council, observed that "the Act, albeit a Procedure Code, must be read in accordance with the natural meaning of its words", and he added that "section 80 is express, explicit and mandatory, and it admits of no implications or ex- ceptions". That is why it was held that a suit in which an injunction is prayed, is still a suit within the words of the section, and to read any qualification into it is an encroachment on the function of legislation. In our opinion, these observations apply with equal force in dealing with the question as to whether a suit under 0. 21 r. 63 is outside the purview of s. 80 of the code. It appears that on this question, there has been a divergence of judicial opinion in India. But, in our opinion, the view that suits under O. 21 r. 63 did not attract the provisions of s. 80, is inconsistent with the plain, categorical and unambiguous words used by it. The result is, the appeal is allowed, the decree passed by the courts below is set aside and the suit is remanded to the trial court for disposal in accordance with law. The appellant would be entitled to his costs from the respondent in this Court and in the High Court. Costs in the trial court would be costs in the suit.

Appeal allowed.

(1) 54 I.A. 338, L8Sp. C. 1./65-20