Ganga Sahai vs Nihal And Anr. on 22 March, 1950

Equivalent citations: AIR1952ALL310, AIR 1952 ALLAHABAD 310

Author: V. Bhargava

Bench: V. Bhargava

ORDER

V. Bhargava, J.

1. This is a plaintiff's appeal arising out of a suit for injunction. The appellant obtained a simple money decree in Suit No. 1886 of 1929 against the respondents and in execution of that decree sixteen mango trees--12 situated in plot No. 139 and 4 situated in plot No. 210--were sold and purchased by the appellant. The sale was confirmed in his favour on 3-1-1934 and formal delivery of possession took place on 7-2 1934. Two of the trees were appropriated subsequently by the appellant. Then, shortly before this suit was brought, the appellant wanted to cut the remaining fourteen trees, but the respondents interfered with him. The appellant, therefore, brought this suit for an injunction restraining the respondents from interfering with his cutting of the trees. The suit was contested by the respondents inter alia on the ground that it was barred by time. The trial Court held that the suit was not barred by time and decreed it. The lower appellate Court, however, differed and, holding that the suit was barred by time, dismissed it. Hence this second appeal by the plaintiff-appellant.

2. The question in this case of deciding what the period of limitation would be does not appear to have been correctly considered by the lower Court at all. There can be no dispute that the period of limitation for such a suit would be six years only under Article 120, Limitation Act. This was a suit for an injunction to prevent the opposite party from interfering with the exercise of a right. No period of limitation for such a suit has been prescribed in any other Article in the Limitation Act. Consequently Art. 120 would apply to this suit. This view is supported by the view taken by a Division Bench of this Court in Waziran v. Babu Lal, 26 ALL. 391. The same case also indicates that the cause of action would arise when the right sought to be exercised was first interfered with. In the present case, the right to cut the trees was interfered with shortly before the suit was brought and, in any case, within six years of the institution of the suit. The suit is, therefore, obviously within time and is, not barred by limitation.

3. The lower Court considered the question of limitation from another angle altogether, viz. whether the period of six years or twelve years' limitation is to be determined with reference to the nature of

the property sought to be taken by the appellant. The lower Court held that, if the trees sought to be cut were treated to be immovable property, the period of limitation for the suit would be twelve years under Article 142, whereas if the trees be taken to be movable property, the period of limitation would be six years under Article 120. In formulating this proposition, the lower Court obviously went wrong because this was not a suit for possession at all. There can be no question of the applicability of Article 142. The question whether the trees are moveable property or immovable property has, however, a bearing on this case in an entirely different aspect. The appellant wanted to exercise his right of ownership of the trees by cutting them and he could only do so if his right to the trees had not been extinguished under Section 28, Limitation Act. The right to the trees would have been extinguished if the right of the appellant to institute a suit for the possession of these trees bad become time barred. From this point of view, it would be necessary to examine whether the trees are to be treated as movable or immovable property for the purposes of the Limitation Act. The lower Court has held the trees to be movable property on the view that in the sale the auction-purchaser acquired no other right except to take away the trees or the timber of the trees. I do not see how this finding was arrived at by the lower Court. The sale certificate and the certificate of delivery of possession nowhere mentioned that it was only the timber of the trees that was sold and purchased by the appellant. These documents indicate that the trees were sold as such while standing on the land. It is true that no interest in the land passed in the sale, but, at the same time, it cannot be said that only the timber in the trees passed to the appellant through that sale. This was not a case of a voluntary sale where the intention of the parties could have been seen to decide whether only the timber passed to the purchaser under the sale or whether the trees as such passed to him. The trees sold were principally fruit bearing trees, and there is nothing at all to indicate that, when the appellant purchased the trees, he did not also acquire the right to enjoy the fruits of the trees until they were cut and removed by him. It must, consequently, be held that what passed to the appellant in the sale were the trees standing on the land and not merely their timber. This view also finds support from the case of Sarju v. Bijai Bahadur Singh, 25 ALL. L. J. 199 decided by Division Bench of this Court. Since the trees passed to the appellant as such and not merely the timber, the trees had to be treated as immovable property and the right to obtain possession over the trees would continue to the appellant for twelve years from the time that the right was acquired and not merely for six years. The appellant could, therefore, bring a suit for possession of the trees up to 1946. The present suit had been brought in the year 1944 and, therefore, when this suit was brought the period of limitation had not expired.

4. The lower Court considered that the views expressed in Pirthi Din v. Bam Lal, 91 Ind. cas. 613 (oudh), Shiv Dayal v. Putto Lal, A. I. R. (20) 1933 ALL. 50 and Rajindra Bahadur Singh v. Malhoo Khan, A. I. B. (16) 1929 Oudh 93 would be applicable to the facts of the present case. In this the lower Court went entirely wrong. Even if it could be held that the intention of the parties was that only the timber of the trees passed to the appellant and not the trees as such, these cases would be inapplicable because all of them relate to the definition of the words 'immovable property' as given in the T. P. Act or the Registration Act. These two Acts give special definition to the words 'immovable property' which differs from the definition given to these words in the General Clauses Act, 1897. The special definition given in those two Acts applies only to those two Acts and not to all other Acts. This definition cannot apply to the Limitation Act. The words 'immovable property' in the Limitation Act have to be interpreted in accordance with the definition given to these words in

the General Clauses Act of 1897. This General Clauses Act lays down that 'immovable property' shall include land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth. The trees when sold were attached to the earth and would, therefore, come within the definition of 'immovable property.' But the words "does not include standing timber, growing crops or grass" which occur in the T. P. Act do not occur in the General Clauses Act. Similarly, the definition in the Registration Act incorporates the words "but not standing timber, growing crops nor grass." These words have been specially introduced in the T. P. Act and in the Registration Act in order to give a different meaning to the words 'immovable property' for the purposes of those Acts from the meaning generally given to these words in all other pieces of legislation to which the definition given in the General Clauses Act would apply. In fact, the circumstance that the Legislature considered it necessary to introduce these words in these two Acts would show that in other Acts, where such words are not used, the words 'immovable property' would include standing timber also. In the Limitation Act, therefore, to which the definition of the General Clauses Act applies, the words 'immovable property' would include even standing timber. The cases relied upon by the lower Court cannot, therefore, apply. The case that is nearest to the point is that of Ma Mon Tha v. Ma San, A. I, R. (16) 1929 Bang. 200. There the question of interpreting the words 'immovable property' for the purposes of the Provincial Small Cause Courts Act had cropped up and it was held that the definition given in the Burma General Clauses Act would apply. The definition in the Burma General Clauses Act was the same as the definition in the General Clauses Act of 1897. It was held that the trees growing on the land had to be treated as immovable property for the purpose of the Provincial Small Cause Courts Act. That case, therefore, supports the view taken by me that for the purposes of the Limitation Act the words 'immovable property' would include trees attached to land, whether sold for purpose of conversion into timber or for purposes of being enjoyed as fruit trees. In all aspects of the case, therefore, it must be held that the suit was within time and that the right of the appellant to the trees had not been extinguished so that he had a cause of action to bring the suit for injunction. The suit has been wrongly dismissed.

5. I, therefore, allow the appeal, set aside the decree of the lower appellate Court and restore that of the trial Court with costs throughout.

6. Leave to appeal under the Letters Patente is granted.