

## **Pashupati Pratap Singh vs Chairman, District Board, Gonda And ... on 4 August, 1952**

**Equivalent citations: AIR1953ALL104, AIR 1953 ALLAHABAD 104**

**Author: V. Bhargava**

**Bench: V. Bhargava**

### **JUDGMENT**

Malik, C.J.

1. This is a plaintiffs' appeal which had been dismissed by a learned single Judge on the plea of limitation. The river Eapti separates Gonda and Basti districts and on the banks of the river there are numerous ghats from which ferries operate. On the Basti side of the river there is a ghat known as Befcnar Ghat, the exclusive ferry rights to which were admittedly granted to plaintiff 1, the Raja of Bansi by the Government. Just opposite Beinar Ghat on the Gonda side there is Materia ghat which was declared by the Government as a public ferry several years ago. On the same side there is Jigna Ghat. From Betnar Ghat on the opposite side of the river a ferry was operated by Abdul Khalik as a Thekedar of Raja Bahadur Pashupati Pratap Singh of Bansi. In the year 1938 the District Board began to operate a ferry from Jigna Ghat to Betnar Ghat. The plaintiffs claimed that this was an infringement of their right and a notice under Section 192, District Boards Act (Act 10 of 1922), was given and the suit out of which this appeal has arisen was filed on 27-10-1942. Originally the plaintiffs had claimed both damages and injunction, but the claim for damages was given up and their claim for injunction alone has survived. The plaintiffs' right was denied on behalf of the District Board but after the decision of the lower appellate Court learned counsel has admitted that the finding of that Court that plaintiff 1 had an exclusive ferry right granted to him at Betnar Ghat by the British Government was a finding of fact. He has further admitted that the action of defendant 1 in allowing other contractors to ply boats is an interference with the plaintiff's rights. Learned counsel also admits that this is a continuing breach. He has, however, relied on Section 29 (2), Limitation Act (Act 9 of 1908 and after its amendment by the Indian Limitation Act 10 of 1922) and has urged that Section 23, Limitation Act, is not applicable to a suit of this nature for which a period of six months' limitation has been fixed under Section 192 (3), District Boards Act.

2. Section 29 (2), Limitation Act (Act 9 of 1908, after its amendment by the Indian Limitation Act 10 of 1922) reads as follows : "Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefor in that schedule,

and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law:

(a) the provisions contained, in Sections 4, 9 to 18 and 22, shall apply only in so far as, and to the extent to which, they are not expressly excluded by such " special or local law; and

(b) the remaining provisions of this Act shall not apply." After its amendment, therefore, the section makes it clear that sections other than Sections 4, 9 to 18 and 22, Limitation Act, do not apply where there is a special period oi; limitation lixed by a special or local law for any suit, appeal or application.

3. The U. P. District Boards Act (Act 10 of 1922}, Section 192 (3), provides that:

"No action such, as is described in Sub-section (1) shall, unless it is an action for the recovery of immoveable property or for a declaration of title thereto, be commenced otherwise than within six months next after the accrual of the cause of action."

The suits described in Sub-section (1) are suits against a board, a member, officer or servant or a board, in respect of an act done or purporting to have been done in its or his official capacity. Section 23, Limitation Act, therefore, does not apply to a suit against the board. That section provides that:

"In the case of continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which, the breach or the wrong, as the case may be continues."

It has been urged by learned counsel for the respondents that though the wrong might be a continuing wrong yet as Section 23 is no longer applicable to a suit for which a period of six months' limitation has been lixed under the U. P. District Boards Act, the suit must be filed within six months of the first breach. There can be no doubt that where there is a single cause of action, which gives rise to a right to file a suit, the suit has to be filed within the period of six months as provided for by the District Boards Act. The question is whether where there are successive causes of action every time the cause of action arises or a wrongful act is done there is anything to debar a plaintiff from giving up his right based on the first cause of action and bringing a suit on the last cause of acbion within six months.

4. Plaintiff 1 had an exclusive right of ferry at Betnar Ghat, that is, he was entitled to issue licences to all boats plying for hire between Betnar Ghat and other ghats and he had also the right to charge toll for boats touching and discharging passengers at that ghat. Every time a| boat not licensed by him plied for hire between Betnar Ghat and other ghats the plaintiff's rights were invaded and it gave rise to a cause of action in his favour. If the plaintiff had not filed a suit on the first, second or the third breach so long as his rights were not terminated or his remedy was not barred, he would have a right to file a suit within six months from the date of the cause of action on which the suit was based.

So even though Section 23, Limitation Act, may not be applicable each breach gave rise to a fresh cause of action and the plaintiff would each time have a right to file a suit. This is not a case where the cause of action had accrued once and for all. We can find nothing in the District Boards Act which would debar the plaintiff filing a suit on a subsequent cause of action within limitation if he had not filed a suit on an earlier cause of action which had become barred. If the action of the defendants had resulted in the dispossession of the plaintiff, then after the lapse of 12 years the plaintiff's right to file a suit would have come to an end by lapse of time. In our view, though Section 23, Limitation Act, does no longer apply to a suit based on a continuous cause of action, on general principles the plaintiff is entitled to file a suit on the last cause of action within the period of limitation unless his suit is barred by Section 11, or Order 2, Civil P. C., or there is any other provision of the law putting an end to his right.

Gause of action giving rise to a right to file a suit may broadly be divided into the following kinds:

(1) A wrongful act of fleeting nature which comes into existence once and for all and gives rise to a right to bring a suit. For example, if a man is assaulted the assault furnishes the cause of action on which a suit might be filed for damages.

(2) There may be successive such causes of action each complete in itself giving rise to a right of suit. Such causes of action are not continuous in the sense that the wrongful act is not continued all the time and there are breaks, however short during which period the rights of the owner are fully revived. In such cases the fact that Section 23, Limitation Act, has not been made applicable to the period of limitation fixed in a local Act would make no difference as, each time there is a fresh breach of the right, a fresh right to file a suit has accrued. The case before us falls in this category as the right of the Eaja of Bansi to grant ferry rights to Abdul Khaliq have not been totally denied and he still works as thekedar on behalf of the Raja but each time passengers or cargoes are landed at the Ghat by other thekaders the rights of the Raja are invaded giving rise to a fresh cause of action.

(3) A third kind might be where there is a total deprivation of a set of rights so that the wrongful act is complete but the effect thereof continues. In such a case, the cause of action is one which came into existence in the beginning but the effect of the wrong is continuous. For example where a man has been dispossessed from his property. Here the limitation begins to run from the date of the dispossession even though the person dispossessed is deprived of his rights during the whole period of his dispossession.

(4) Lastly, cases of continuous wrongs which mostly are in the nature of continuous nuisances. For example, where there is no total deprivation of the right but there is partial invasion which is neither intermittent nor fleeting but is continuous. In such a case there are no distinct and separate causes of action. We are inclined to the view that this is a type of case to which if Section 23, Limitation Act, is not made applicable the suit must be filed within the period of limitation fixed in the special or

local Act. But we need not express any definite opinion as the point has not arisen in this case.

5. Ag this case, in our view, falls in the second class of cases mentioned above where the Raja's rights are not totally denied but his rights are intermittently affected each time a boat is plied which has not been given the licence by the Raja, the plaintiff could have filed the suit within six months of the last invasion of his rights and the plaintiff's suit was not barred by limitation.

6. We allow the appeal, set aside the decree of the learned single Judge and restore the decree of the lower Appellate Court with costs in all the courts.