

Ram Lakhan vs Mst. Tulsha Widow Of Mata Prasad And Ors. on 9 October, 1953

Equivalent citations: AIR1954ALL199, AIR 1954 ALLAHABAD 199

ORDER

Brij Mohan Lall, J.

1. This is an application in revision by a defendant against whom a suit for possession instituted under Section 9, Specific Relief Act has been decreed by the learned Munsif of Gyanpur, district Banaras.

2. The plaint allegations, which have been found to be correct by the learned Munsif, are that the plaintiffs (opposite parties 1 and 2) were in peaceful possession of the land in dispute but they were, without their consent and otherwise than in due course of law, dispossessed therefrom by the applicant and other persons who were impleaded in the Court below as co-defendants and who are arrayed in this revision as opposite parties 3 to 6. These findings of fact have to be accepted as correct in these proceedings.

3. The only question of law that arises for decision is whether the suit was time-barred. In order to appreciate this question, it is necessary to mention certain facts. The plaintiff's dispossession took place on 12-7-1949. The suit was instituted in the Munsif's Court on 21-12-1949. On 3-4-1950 the plaint was ordered to be returned for presentation to "proper Court" by which term was meant the revenue Court. The plaint was actually returned on the next day, i.e. on 4-4-1950. It was presented in the revenue Court the same day. On 6-6-1951 the revenue Court held that the suit was cognizable by the civil Court. It ordered the plaint to be returned for re-presentation to the said Court.

The plaint was actually returned on 4-7-1951 on which date it was again presented before the learned Munsif who entertained it. This presentation was certainly made beyond the period of six months from the date of actual dispossession. Article 3 of the Schedule to the Limitation Act prescribes a period of six months calculated from the date of dispossession for instituting a suit under Section 9, Specific Relief Act.

4. The plaintiffs sought to invoke to their aid the provisions of Section 14, Limitation Act. Under this section a plaintiff can exclude from computation the period during which he "has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or in a Court of appeal, against the defendant"

where the proceeding "is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like

nature, is unable to entertain it".

The learned Munsif has held that the plaintiffs were entitled to the benefit of this section. He has also pointed out the reason why the plaintiffs were driven from pillar to post. It appears that in 1949 the view prevalent in Courts was that a suit like the present, where the property in dispute was agricultural holdings, would be entertained by the revenue Court. This belief was brought about by a decision of a single Judge of this Court reported in -- 'Beni Madho Singh v. Prag', AIR 1949 All 510 (A). This view appears to have been in force when the order dated 3-4-1950 directing the return of the plaint for presentation to revenue Court was passed. Subsequent decision took a different view. These decisions are reported in -- 'Jagdish Singh v. Mehi Lal Mullah', 1950 All LJ 645 (B) and --'Ganga Din v. Gokul Prasad', AIR 1950 All 407 (C). These decisions apparently influenced the decision of the revenue Court which, obviously acting on these authorities, returned the plaint for re-presentation to the civil Court.

5. The law is now well settled that, if a plaintiff claims to be in possession and makes a grievance of the fact that he was dispossessed by the defendant without his consent and other-wise than in due course of law, he can maintain the suit in the civil Court under Section 9, Specific Relief Act, notwithstanding the fact that the property in dispute may be agricultural land. Therefore, there can be no doubt that the revenue Court was a Court which could not entertain the suit on account of want of Jurisdiction. At the same time, there can be no doubt that the plaintiffs had acted 'bona fide' in presenting the plaint to the revenue Court. They had been directed by the Munsif to present the plaint there and, according to the state of law as then understood, the suit was believed to be entertainable by the revenue Court only. Therefore, the plaintiffs are entitled to claim exclusion of the period spent in the revenue Court.

6. The next question that arises for decision is as to whether the period of the pendency of the suit in the revenue Court is to be calculated up to 6-6-1951, on which date the order for the return of plaint was passed, or up to 4-7-1951, on which date the plaint was actually returned.

Explanation I to Section 14, Limitation Act throws light on this question. It runs as follows:

"In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted."

7. According to this Explanation, the period up to "the day on which the proceedings therein ended" is to be excluded. This phrase was interpreted in the case of -- 'Jafar Uddin v. Debi Prasad', AIR 1939 All 590 (D) to mean that the period up to the day of the actual return of the plaint was to be excluded. While agreeing that in majority of cases the period right up to the date of the actual return of the plaint should be excluded, I am not prepared to hold as a hard and fast rule, applicable to all cases, that exclusion should extend up to the date of the actual return of the plaint. The period shall vary according to the circumstances of each case. After an order for the return of plaint is passed, office has to go through certain formalities before the plaint is actually returned. An endorsement has to be made on the back of the plaint under O. 7, R. 10(2), C. P. C. Entries have to be made in

certain registers and it is only then that the plaint can be returned. Office may take several days for going through all these formalities. The actual period required, for observing all these formalities will depend upon the state of work in each office.

But it is conceivable to think of cases where the delay may take place not on account of the office but on account of the plaintiff himself. The plaintiff may feel dissatisfied with the order directing the return of the plaint, may be contemplating an appeal and may even refuse to take back the plaint when offered to him by the office. His refusal may continue for months together. In such cases it will not be proper to hold that the period right up to the date of the actual return of the plaint is to be excluded. In such cases, the date on which the plaint was tendered to the plaintiff by the office will be "the day on which the proceedings therein ended".

8. In the present case, however, the actual return was made within a month of the date of order of return. There is nothing to indicate that the plaintiffs had refused to take back the plaint when tendered to them by the office or that they were, in any way, responsible for the delay in the actual return of the plaint. The return was not made with unreasonable delay after the date of the order of return. In the circumstances, I am prepared to hold that the period right up to the date of actual return should be excluded from computation.

9. Another question that arises for decision is whether the period during which the suit remained pending in the Munsif's Court on the first occasion is to be excluded from consideration. The Munsif's Court was not a Court which lacked jurisdiction to try the suit, although everyone seemed to believe at that time that the Munsif had no jurisdiction. The learned counsel for the applicant read out to me a petition which the plaintiffs had presented in that suit. According to this document, the plaintiffs had themselves admitted that the Munsif's Court had no jurisdiction and had expressed a desire that the plaint might be returned. This petition is not on the record and the learned counsel for the opposite parties had serious objection to this document being taken into consideration.

But I am of the opinion that, even if this document is read in evidence, it would not alter the situation. It does not disclose lack of 'bona fides' on the part of the plaintiffs. On the contrary, it proves their good faith inasmuch as they, having regard to the state of law as it was then understood, conceded a certain legal position. But still it was the Court which passed the order and they were bound by it because that, although the element of good faith might be there, the other ingredient, viz. the lack of jurisdiction in the Court, did not exist because the Court did really possess the jurisdiction.

In this connection, it may be pointed out that the defect of jurisdiction is not the only ground to attract the provisions of Section 14, Limitation Act. If there is "any cause of a like nature" the plaintiffs can still take advantage of Section 14. In the present case, both parties and the court believed that there was lack of jurisdiction in the Court. There was, therefore, other "cause of a like nature" within the meaning of the phrase as used in Section 14 so as to attract the applicability of that section.

10. The learned counsel for the applicant relied on the case of -- 'Sadayatan Pande v. Ram Chandra', AIR 1934 All 688 (PB) (E). That case is clearly distinguishable. In that case the plaintiff had sought permission to withdraw the suit under Order 23, Rule 1, with permission to institute it again on the same cause of action. It was held that, when representing the plaint, he could not avail of Section 14. Limitation Act. In the present case, however, there was no withdrawal of suit by the plaintiffs. Moreover, Order 23, Rule 2, C. P. C. clearly indicates that when a suit is withdrawn under Order 23, Rule 1, the fresh suit shall be governed by the law of limitation "in the same manner as if the first suit had not been instituted".

This special provision which governs suits instituted after withdrawing the first suit with permission of the Court under Order 23, Rule 1, can, by no stretch of reasoning, be made applicable to the present circumstances. I am, therefore, of the opinion that the authority cited by the learned counsel for the applicant does not help him. In my opinion, the learned Munsif has acted rightly in extending the benefit of Section 14, Limitation Act to the plaintiffs and in treating the suit as having been filed within time.

11. The revision, therefore, fails. It is hereby dismissed with costs.