

Vijay Kumar Rampal And Ors. vs Diwan Devi And Ors. on 1 May, 1984

Equivalent citations: AIR1985SC1669, AIR 1985 SUPREME COURT 1669, 1984 SRILJ 19

Bench: D.A. Desai, V. Balakrishnan Eradi, R.B. Misra

JUDGMENT

1. These two appeals disclose a distressing feature of the vagaries of judicial process and the horrendous delay in disposing of cases and controversies. The appellants who are plaintiffs filed two suits for possession of land particulars of which are described in a plaint in each case. The suits bore Nos. 32 and 33 of 1967. They were instituted in the Court of District Judge, Jammu in the State of Jammu and Kashmir. On the summons of the suits being served defendants entered appearance and, inter alia, contended that the Court of District Judge, Jammu had no jurisdiction to try each of the suits on the ground that in view of the pecuniary jurisdiction it should have been instituted in the Court of the lowest pecuniary jurisdiction. This contention found favour with the learned District Judge who by his order dated May 23, 1968 directed that plaint on each of the suits be returned to the plaintiff for presentation to the proper court. Pursuant to this order the plaint in each suit was returned on May 24, 1968 and on the same date both the plaints were presented in the Court of Sub Judge at Jammu.

2. A contention was raised by the defendants that the suits when presented in the Court of Sub-Judge were barred by limitation. The learned sub-judge negatived the contention. Two Civil Revision Petitions being 23-24 of 1970 were preferred by the defendants in the High Court of Jammu & Kashmir at Jammu. The learned single Judge of the High Court took note of the fact that the court-fees payable should have been computed according to Section 7(v)(b) of the Court-fees Act which was not done and instead suit was valued at Rs. 12/- and a court-fee on the amount of Rs. 12/- was paid and this according to learned Judge passes comprehension. The learned Judge concluded 'that not only there has been want of due care and attention on the part of the plaintiffs but there has been gross negligence in fixing the valuation.' This being the fault of the plaintiffs, according to the learned Judge provision contained in Section 14 of the Limitation Act would not assist the plaintiffs. On this finding both the revision petitions were allowed and the suits were dismissed as being barred by limitation. Hence these two appeals by special leave.

3. Mr. Sharma learned Counsel for the respondents urged that want of due care and attention coupled with negligence in not properly valuing suits for pecuniary jurisdiction and not paying court-fees as computed under Section 7(v)(b) of the Court-fees Act would clearly show lack of good faith and if that be so, learned Judge of the High Court was right in holding that the suits are barred by limitation. We are at a loss to understand and appreciate the contention of Shri Sharma as well as the approach of the learned Judge. Section 14 of the Limitation Act provides for exclusion of time of proceeding bona fide in court without jurisdiction. In computing the period of limitation for any suit

the time during which the plaintiff has been prosecuting with due diligence another civil proceeding against the defendant shall be excluded where the proceeding relates to the same matter in issue and is prosecuted in a good faith in a court which from a defect of jurisdiction is unable to entertain it. The expression good faith qualifies prosecuting the proceeding in the Court which ultimately is found to have no jurisdiction. Failure to pay the requisite court-fee found deficient on a contention being raised or the error of judgment in valuing a suit filed before a Court which was ultimately found to have no jurisdiction has absolutely nothing to do with the question of good faith in prosecuting the suit as provided in Section 14 of the Limitation Act. The High Court in our opinion was in error in holding that defective valuation and improper computation of court-fees discloses lack of good faith on the part of the plaintiff.

4. The suits were filed in the Court of District Judge at Jammu before whom a contention was raised by the defendants that the learned District Judge having unlimited pecuniary jurisdiction had no jurisdiction as there was a Court of lower pecuniary jurisdiction to entertain the suits. Without finally pronouncing on the aspect about which we have serious reservations that the Court of higher pecuniary jurisdiction could not entertain the suit which could have been instituted in the Court of lower pecuniary jurisdiction, it may be stated that when the court held it had no jurisdiction and directed the plaints to be returned for presentation to the proper Court the plaintiff promptly acted. On the day following the day on which order was made, the plaintiffs took the plaints and on the same day, the plaintiffs presented the same in the Court of Sub-Judge at Jammu. The plaintiffs could not be faulted on this account.

5. The facts are very simple and call for no discussion. The order of the learned Judge directing that the plaints be returned for presentation to proper court was made on May 23, 1968 and on the next day the plaints were returned and the same day were presented in the Court of Sub-Judge at Jammu. There was not the slightest negligence nor any delay in acting upon the order of the learned District Judge. Accordingly, Section 14 of the Limitation Act must come to the rescue of the plaintiffs. The learned Judge, in our opinion, was clearly in error in exercise of the revisional jurisdiction in holding that the plaintiffs are not entitled to the benefit of Section 14 and that both the suits were barred by limitation. Accordingly, the order of the learned single Judge of the High Court in both the revision petitions is set aside and the one of learned Sub-Judge is restored with no order- as to costs.

6. As both the suits are of 1967 vintage the learned Sub-Judge should give them priority and dispose them of as expeditiously as possible.