Madhavrao Narayanrao Patwardhan vs Ramkrishna Govind Bhanu And Ors. on 18 April, 1958

Equivalent citations: AIR1958SC767, (1958)IIMLJ164(SC), [1959]1SCR564, AIR 1958 SUPREME COURT 767, 1958 SCJ 963, 1959 SCR 564, 1961 BOM LR 531

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Bench: B.P. Sinha

JUDGMENT

Sinha, J.

1. These two appeals are directed against the judgment and decree dated November 30, 1951, passed by a Division Bench of the High Court of Judicature at Bombay, reversing those of the District Judge at Miraj, dismissing the plaintiff's suit for possession and mesne profits in respect of the suit properties in Civil Suit No. 2 of 1940. Civil Appeal No. 287 of 1955, is on behalf of the added respondent No. 7, and the Civil Appeal No. 288 of 1955, is on behalf of the added respondent No. 6 - the State of Bombay which now represents the original first defendant - the Miraj State (now merged in the State of Bombay).

2. In the view we have taken, as will presently appear, on the question of limitation, it is not necessary to state in any detail the pleadings of the parties or the merits of the decisions of the courts below. For the purposes of these appeals, it is only necessary to state that the plaintiff-respondent who was the appellant in the High Court, had instituted a suit on January 31, 1929, the very last day of limitation, in the Munsiff's Court at Miraj. This suit was registered as Original Suit No. 724 of 1930, in that court. The plaintiff prayed in the plaint for possession and mesne profits in respect of lands at Malgaon and Takli, on the ground that the then State of Miraj had wrongfully resumed those lands in 1910, as part of the State Sheri-Khata, which, after inquiry, was ordered on July 31, 1915, to be recorded as such lands, and the usufruct thereof during that period to be appropriated to the Khasgi-Khata of the State. The plaintiff impleaded the State of Miraj as the first defendant. Defendants 2 and 3 are plaintiff's brothers who are said to have relinquished their interest in the suit properties in favour of the plaintiff. Defendants 4 to 7 belong to the family of Narso who was, until his death in 1910, recorded in respect of the suit properties, but they did not appear and contest the plaintiff's claim. The suit was valued at Rs. 2,065, being 5 times the assessment on the disputed lands for the purposes of court-fee. No valuation was given in the plaint for the purposes of jurisdiction with reference to the value of the properties claimed. A similar suit had been instituted by the plaintiff in the same court in respect of lands in another village called Tikoni. That had been registered as Original Suit No. 443 of 1928, in the Munsiff's court at Miraj,

and we shall refer to that suit as the 'Tikoni suit'. It appears that the two suits proceeded in that court in a very leisurely fashion until November 29, 1939, when the Tikoni suit was dismissed. After the dismissal of that suit, the plaintiff made an application on June 21, 1940, drawing the attention of the court to the fact that the value of the subject-matter of the suit had not been mentioned in the plaint, and that, on a moderate valuation, the disputed land should not be worth "less than a minimum of 8 to 10 thousand rupees", and that, therefore, the court had no pecuniary jurisdiction to hear the suit. The court allowed the application and directed the plaint to be returned to be presented to the proper court, on July 4, 1940. The plaint was accordingly re-presented on that very date to the court of District Judge at Miraj, and the same was numbered as Suit No. 2 of 1940.

3. The original first defendant only contested the suit on a number of grounds, including the plea of limitation. By a petition dated October 27, 1942, the defendant brought it to the notice of the court that the "plaintiff despite his knowledge that the value of the subject-matter of the suit was far in excess of the amount of jurisdiction of the Munsiff's court filed the suit in the said court. The said act of the plaintiff was not at all 'bona fide'..... The facilities as regards limitations, etc. which a 'bona fide' suitor would be entitled to cannot, therefore, be afforded to the plaintiff."

4. After recording evidence and hearing the parties, the learned District Judge, by his judgment and decree dated December 12, 1945, dismissed the suit with costs. On appeal by the defeated plaintiff, during the pendency of the appeal, the State of Bombay was added as the 6th respondent, and the Yuvaraj of Miraj, Madhavrao Narayanarao, son of the Raja Sahib of Miraj, was added as the 7th respondent, as the latter had acquired an interest in the disputed properties by virtue of a grant in his favour. The appeal was ultimately registered as First Appeal No. 104 of 1950, in the High Court of Bombay. A Division Bench of that Court, by its judgment and decree dated November 30, 1951, allowed the appeal and decreed the suit with costs against the first and the 7th respondents. The respondents 6 and 7 aforesaid applied for and obtained the necessary certificate for coming up in appeal to this Court. Hence, these two appeals.

5. We have heard the counsel for the parties at a great length on the preliminary issue of limitation. On behalf of the appellants, it was urged with reference to the plea of limitation that in the facts and circumstances of this case, the plaintiff is not entitled to the benefit of section 14 of the Limitation Act, and that, therefore, the suit as instituted in the court of the District Judge at Miraj on re-presentation of the plaint in that court on July 4, 1940, was barred by limitation. Alternatively, it was argued that even assuming that the courts below were right in giving the plaintiff the benefit of that section, the suit was barred by limitation of 12 years under Art. 142 of the Limitation Act, whether the cause of action arose in 1910, on the death of Narso aforesaid, or in 1915, when the final order was passed by the Miraj State treating the resumed property as part of the Khas property of the State, which was the date of the cause of action for the suit as alleged in the plaint. On behalf of the plaintiff-respondent, it was strenuously argued that the courts below were right in holding that the plaintiff was entitled to a deduction of all the time between January 31, 1929, when the suit had been originally filed in the court of the Munsiff at Miraj, and July 4, 1940, when the plaint was returned and re-presented as aforesaid. It was also argued that it was common ground that the suit as originally filed on January 31, 1929, was within time though that was the last day of limitation. If the plaintiff is given the benefit of section 14 of the Limitation Act, ipso facto, the suit on

representation of the plaint in the District Court at Miraj, would be within time.

6. In our opinion, the appellant's contentions based on the provisions of section 14 of the Limitation Act, are well-founded, and the decision of the courts below, granting the plaintiff-respondent the benefit of that section, must be reversed for the following reasons : Before the promulgation, on January 1, 1926, of the Proclamation by State Karabhari, Miraj State, the law of limitation in that State, it is common ground, was that the plaintiff had the benefit of the period of 20 years as the period during which a suit for possession after dispossession, could be instituted. By that Proclamation, the Indian Limitation Act (IX of 1908) was made applicable to that State with effect from February 1, 1926, subject to this modification that all suits which would have been in time according to the old law of the State but would have become barred by limitation as a result of the introduction of the Indian Limitation Act, could be filed up to January 31, 1929, by virtue of certain notifications extending the last date for the institution of such suits. Hence, the suit filed on that date in the Munsiff's Court at Miraj, was admittedly within time, and was subject to the law of limitation under the Indian Limitation Act. When the plaint was returned by the Munsiff's Court at Miraj, at the instance of the plaintiff himself on the ground of want of pecuniary jurisdiction, and re-presented to the Court of the District Judge at Miraj on July 4, 1940, it was, on the face of it, barred by limitation, whether the period of limitation started to run in 1910 or 1915, unless the case is brought within section 14 of the Limitation Act. Sub-section (1) of section 14 of the Limitation Act, which admittedly governs the present case, is in these terms :-

> "(1). In computing the period of limitation prescribed for any suit, the time during which the plaintiff 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, shall be excluded, 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."

7. In order to bring his case within the section quoted above, the plaintiff has to show affirmatively :

> (1) that he had been prosecuting with due diligence the previous suit in the court of the Munsif at Miraj, (2) that the previous suit was founded upon the same cause of action, (3) that it had been prosecuted in good faith in that court, and (4) that that court was unable to entertain that suit on account of defect of jurisdiction or other cause of a like nature.

8. There is no dispute between the parties here that conditions (2) and (4) are satisfied. But the parties differ with reference to the first and the third conditions. It has been argued on behalf of the appellants that the courts below had misdirected themselves when they observed that there was no proof that the plaintiff had not been diligently prosecuting the previously instituted suit, or that it was not being prosecuted in good faith; that the section requires that the plaintiff must affirmatively show that the previously instituted suit was being prosecuted in good faith and with due diligence; and that, viewed in that light, the plaintiff has failed to satisfy those conditions.

9. The conclusion of the learned trial judge on this part of the case, is in these words :-

> "The plaintiff's mala fides are therefore not established and the period occupied in prosecuting the former suit must be excluded under section 14 of the Limitation Act."

10. The observations of the High Court are as follows :-

> "We do not see our way to accuse the plaintiff of want of good faith or any mala fides in the matter of the filing of the suit in the Subordinate Judge's Court at Miraj. There is nothing on the record to show that he was really guilty of want of good faith or non-prosecution of the suit with due diligence in the Court of the Subordinate Judge at Miraj."

11. Both the courts below have viewed the controversy under section 14 of the Limitation Act, as if it was for the defendant to show mala fides on the part of the plaintiff when he instituted the previous suit and was carrying on the proceedings in that court. In our opinion, both the courts below have misdirected themselves on this question. Though they do not say so in terms, they appear to have applied the definition of "good faith" as contained in the General Clauses Act, to the effect that "A thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not." But the Indian Limitation Act contains its own definition of good faith to the effect that "nothing shall be deemed to be done in good faith which is not done with due care and attention" - (section 2(7)). We have, therefore, to see if the institution and prosecution of the suit in the Munsiff's Court at Miraj, was done with due care and attention. We know that the plaint in the Tikoni suit filed by the same plaintiff in the same court, did contain a statement as to the value of the subject-matter, but it was conspicuous by its absence in the plaint in the suit as originally filed in the Munsiff's Court at Miraj. All the facts alleged in the plaintiff's petition for the return of the plaint, were known to the plaintiff ever since the institution of the suit. Nothing fresh was discovered in 1940. On the other hand, we know definitely that the Tikoni suit had been dismissed by the trial court on merits. The suits were of an analogous character in the sense that the controversy was similar in both of them. The appellant's contention that on the dismissal of the plaintiff's Tikoni suit in November, 1939, he, naturally, became apprehensive about the result of the other suit, and then moved the court for the return of the plaint on the ground of pecuniary jurisdiction, appears to be well-founded. The plaintiff knew all the time that the value of the properties involved in the suit, was much more than Rs. 5,000 which was the limit of the pecuniary jurisdiction of the Subordinate Judge's Court. Can an omission in the plaint to mention the value of the properties involved in the suit, be brought within the condition of 'due care and attention' according to the meaning of "good faith" as understood in the Limitation Act ? It has to be remembered that it is not one of those cases which usually arise upon a revision of the valuation as given in the plaint, on an objection raised by the defendant contesting the jurisdiction of the court to entertain the suit. Curiously enough, the defendant had not raised any objection in his written statement to the jurisdiction of the court to entertain the suit. Apparently, the plaintiff was hard put to it to discover reasons for having the case transferred to another court. The question is not whether the plaintiff did it dishonestly or that his acts or omission in this connection, were mala fide. One the other hand, the question is whether, given due care and attention, the plaintiff could

have discovered the omission without having to wait for about 10 years or more. The trial court examined the plaintiff's allegation that the omission was due to his pleader's mistake. As that court observed "he makes this contention with a view to shield himself behind a wrong legal advice." That court has answered the plaintiff's contention against him by observing that the plaintiff was not guided by any legal advice in this suit; that the plaint was entirely written by him in both the suits, and that he himself conducted those suits in the trial court "in a manner worthy of a senior counsel." The court, therefore, rightly came to the conclusion that the plaintiff himself was responsible for drafting the plaint and for presenting it in court, and that no pleader had any responsibility in the matter. No reason was adduced why, in those circumstances, the value of the subject-matter of the suit, was mentioned in the plaint in the Tikoni suit but not in the plaint in respect of the present suit.

12. There is another serious difficulty in the way of the plaintiff. He has not brought on the record of this case any evidence to show that he was prosecuting the previously instituted suit with "due diligence" as required by section 14. He has not adduced in evidence the order-sheet or some equivalent evidence of the proceedings in the Sub-Judge's Court at Miraj, to show that in spite of his due diligence, the suit remained pending for over ten years in that court, before he thought of having the suit tried by a court of higher pecuniary jurisdiction. In our opinion, therefore, all the conditions necessary to bring the case within section 14, have not been satisfied by the plaintiff. There could be no doubt about the legal position that the burden lay on the plaintiff to satisfy those conditions in order that he may entitled himself to the deduction of all that period between January 31, 1929 and July 4, 1940. It is also clear that the courts below were in error in expecting the contesting defendant to adduce evidence to the contrary. When the plaintiff has not satisfied the initial burden which lay upon him to bring his case within section 14, the burden would not shift, if it ever shifted, to the defendant to show the contrary. In view of this conclusion, it is not necessary for us to pronounce upon the other contention raised on behalf of the appellants that, even after giving the benefit of section 14, the suit is still barred under Art. 142 of the Limitation Act. This is a serious question which may have to be determined if and when it becomes necessary.

13. For the aforesaid reasons, it must be held that the suit is barred by limitation. The appeals are, accordingly, allowed and the suit dismissed with costs throughout. One set to be divided equally between the two appeals.

14. Appeals allowed.