Syed Yousuf Yarkhan & Ors vs Syed Mohammed Yarkhan & Ors on 4 January, 1967

Equivalent citations: 1967 AIR 1318, 1967 SCR (2) 318

Author: R.S. Bachawat

Bench: R.S. Bachawat, K.N. Wanchoo, J.M. Shelat

PETITIONER:
SYED YOUSUF YARKHAN & ORS.

Vs.

RESPONDENT:
SYED MOHAMMED YARKHAN & ORS.

DATE OF JUDGMENT:
04/01/1967

BENCH:
BACHAWAT, R.S.
BENCH:
BACHAWAT, R.S.
WANCHOO, K.N.
SHELAT, J.M.

CITATION:
1967 AIR 1318 1967 SCR (2) 318

ACT:
Part B States (Laws) Act, 1951--Indian Limitation Act, 1908 extended to Hyderabad--Hyderabad Act II of F1322 repealed--Possession of Muslim wakf property situated in Hyderabad lost in 1937--Suit for recovery filed in 1956--Suit whether filed within time--Indian Act or Hyderabad Act to apply--Effect of Indian Limitation Act, s. 30.

HEADNOTE:
The Dargah Hazarat Habeeb Ali Shah Saheb, a muslim wakf had certain property in Hyderabad of which it was dispossessed in 1937. The Hyderabad Limitation Act II of 1322F did not apply to wakf properties ,and thus there was no limitation under it for a suit for recovery of such .property. On April 1, 1951 the Part B States (Laws) Act, 1951 came into force and extended the Indian Limitation

Act,, 1908 to Hyderabad, :and the corresponding law in Hyderabad accordingly stood repealed. By S. 30 the Indian Act laid down that any suit for which the period of limitation prescribed under the Indian Act, was shorter than that prescribed in the State Act could be instituted "within the period of two years next after the coming into force of this Act in that Part B State or within the period prescribed for such suit by such corresponding law, whichever period expires first." In 1956 the mutawalli of the aforesaid Dargah land the Board of Muslim Endowments Hyderabad filed the present suit for 'recovery of the wakf property. The trial court, on the footing that :the Indian Limitation Act applied, dismissed the suit as time barred under Art. 142. The High Court however held that the application of the Indian Limitation Act, 1908 to the suit would bar and confiscate the ,,existing cause of action for the recovery of the suit property, as the Part B States (Laws) Act while extending the Indian Limitation Act to Hyderabad did not allow a reasonable time to the plaintiffs for enforcing 'the existing cause of action and consequently the Indian Limitation Act could not affect the suit and the suit was governed by the Hyderabad Limitation Act. Some of the defendants appealed to this Court.

HELD : The trial court had rightly held the suit to be time-barred.

(i) The extension of the Indian Limitation Act, 1908 to Hyderabad and the consequential change in law prescribing shorter period of limitation did not confiscate the existing cause of action and must be regarded as an alteration in the law of procedure for its enforcement. Therefore the normal rule that the law of limitation applicable to the suit is the 'law in force at the date of the institution of the suit must apply. [321 C-D]

The period of limitation for the suit prescribed by the Indian Limitation Act was shorter than the period prescribed by the Hyderabad Act.. Therefore s. 30 of the Indian Act enabled the plaintiffs to institute the suit within a period of two years after April 1. 1951. The suit not having been instituted within that period the plaintiffs could not avail themselves of the benefit of s. 30. [321 D]

(ii) The Board of Muslim Endowments was not an agent of the State Government by Virtue of any provision of the Muslim Wakf Act, 1954 :and a suit instituted by it for the recovery of wakf property was not a

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suit by or on behalf of the State Government to which Art. 149 of the Indian Limitation Act, 1908 was applicable. [322 C]

Tamlin v. Hannafored. (1949)2 A.E.R. 327, and State Trading Corporation of India Ltd. v. Commercial Tax Officer, A.I.R. 1963 S.C. 811, referred to.

Since the passing of the Religious Endowments Act, 1963 the Mutawalli cannot be regarded as a procurator of the

Government. A suit by him for the recovery of wakf property cannot be regarded as a suit on its behalf. [322 E-F]
Jewan Doss Sahoo v. Shah Kubeer-ood-Deen, 2 Moo. I.A. 390 Shaikh Laul Mahomed v. Lalla Brij Kishore, 17 Weekly Reporter (Sutherland) 430 and Behari Lal & Sons. v. Muhamad Muttaki, I.L.R. 20 All. 482, referred to.
On his appointment the Mutawalli acquires no new right of suit and his appointment does not give him a fresh starting point of limitation for the recovery of the property. [322 F-G]
(iii) The contention that as limitation did not run under the Hyderabad Limitation Act, the date when the Indian limitation Act, 1908 came into force in Hyderabad should be regarded as the starting point of limitation has no force. During the currency of the Hyderabad Limitation Act limitation did not 'run, but the Act did not change the date of dispossession. That date was September 20, 1937. For the purpose of Art., 142 of the Indian Limitation Act, 1908 under which, the case fell, that date must be regarded as the starting point of limitation. [322 G-H; 323 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICATION : Civil Appeal No.760 of 1964. Appeal by special leave from the judgment and decree dated December 12, 1962 of the Andhra Pradesh High Court in C.C.C Appeal No. 5 of 1960.

R.V. Pillai and M. M. Kshatriya, for the appellants. Daniel A. Latifi and M. I Khowaja, for the respondents. The Judgment of the Court was delivered by Bachawat, J. This appeal arises out of a suit for the recovery of possession of the house known as Sama Khana and five tiled rooms inside the compound of a dargah at Katalamandi, Hyderabad. The property belongs to Dargah Hazarat Habbeeb Ali Shah Saheb. The dargah while in possession of the property was dispossessed by the defendants long ago. Counsel for the plaintiffs conceded before us that the dargah was dispossessed of the property on or about September 20, 1937, when the defendants filed objections in the course of certain proceedings for enrolment of the property as endowed property under the Hyderabad Endowment Regulations. While the Hyderabad Limitation Act II of 1322 F was in force in Hyderabad, there was no limitation for a suit for recovery of a wakf property. Section 29(c) of the Act applied to suits relating to wakf. By virtue of s. 29(c), a suit for recovery of a wakf property was outside the Act. On April 1, 1951, the Part B States (Laws) Act.- 1951, came into force and extended the Indian Limitation Act 1908 to Hyderabad, and the corresponding law in force in Hyderabad stood repealed. On February 3, 1956, the mutawalli of the dargah and the Board of Muslim Endowments, Hyderabad, instituted the present suit for recovery of the property from the defendants. The suit was substantially a suit on behalf of the wakf who while in possession of the property had been dispossessed. On the assumption that the Indian Limitation Act, 1908 applies to the suit, prima facie the suit would be governed by art. 142 of that Act and would be barred by limitation. The trial court dismissed the suit on the ground that it was so barred. On appeal, the

High Court of Andhra Pradesh held that the suit was governed by the Hyderabad Limitation Act and was not barred by limitation. On this finding the High Court decreed the suit. Some of the defendants now appeal to this Court by special leave. The High Court held that the application of the Indian Limitation Act 1908 to the suit would bar and confiscate the existing cause of action for the recovery of the suit property, as the Part B States (Laws) Act while extending the Indian Limitation Act to Hyderabad did not allow a reasonable time to the plaintiffs for enforcing the existing cause of action and consequently the Indian Limitation Act could not affect the suit and the suit was governed by the Hyderabad Limitation Act. Now, the Part B States (Laws) Act 1951 was passed on February 22, 1951. The Act came into force on April 1, 1951 by virtue of a notification of the Central Government dated March 7, 1951 and published in the gazette on March 10, 1915. It extended to the Part B States the Indian Limitation Act 1908 as amended with the addition of s. 30 which is in these terms:

> "30. Provision for States for which the period prescribed is shorter than that prescribed by any law previously in force in. a Part B State. Notwithstanding anything herein contained, any suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by any law corresponding to this Act in force in a Part B State which is repealed by the Part B States (Laws) Act, 1951, may be instituted within the period of two years next after the coming into force of this Act in that Part B States or within the period prescribed for such suit by such corresponding law, whichever period expires first."

Section 30 should be construed liberally considering that it is intended to alleviate hardship consequential on the introduction' of a shorter period of limitation. Ex-facie, S. 30 applies to a suit for which the period of limitation prescribed by the Indian Limitation Act 1908 is shorter than the period of limitation prescribed by the corresponding law in force in the Part B State. Now, the Hyderabad Limitation Act did not apply to a suit for recovery of possession of a wakf property. The result was that under the corresponding law in force in Hyderabad, there was no limitation for such a suit. In other words, the period of limitation prescribed for the suit by the corresponding law in Hyderabad was an unlimited period. Article 142 of the Indian Limitation Act 1908 applies to a suit for recovery of possession of the wakf property. As it prescribes a shorter period of limitation for the institution of the suit, s. 30 enabled the plaintiffs to institute the suit within a period of two years after April 1, 1951. The Part B States (Laws) Act 1951 while extending the Indian Limitation Act 1908 to Hyderabad thus allowed the plaintiffs reasonable time to institute the suit for recovery of the property. The extension of the Indian Limitation Act 1908 to Hyderabad and the consequential change in law prescribing a shorter period of limitation did not confiscate the existing cause of action and must be regarded as an alteration in the law of procedure for its enforcement. We must, therefore, apply the normal rule that the law of limitation applicable to the suit is the law in force at the date of the institution of the suit. The suit is, therefore, governed by the Indian Limitation Act 1908. The plaintiffs did not institute the suit within two years after April 1, 1951. They cannot therefore avail themselves of the benefit of s. 30.

Counsel submitted that the present suit was a suit by or on behalf of the State Government and was therefore governed by art. 149 of the Indian Limitation Act 1908. He submitted that the Board of

Muslim Endowments, Hyderabad, which according to him was the Board of Wakfs constituted under the Muslim Wakfs Act 1954, was an agent of the Central Government. By s. 9(2) of the Muslim Wakfs Act, 1954, the Board of Wakfs is a body corporate and by s. 15 of this Act, the Board is vested with the right of general superintendence of wakfs and is empowered to take measures for the recovery of the lost properties of any wakf and to initiate and defend suits and proceedings relating to wakfs. Counsel submitted that a corporation may be an agent of the State Government, and in support of this contention relied upon Halsbury's Laws of England, 3rd Ed., Vol. 9, p. 10- Tamlin v. Hannaford(1), and the observations of Shah, J. in State Trading Corporation of India Limited v. The Commercial Tax Officer(2). He submitted that the State Government has delegated its functions of superintendence over wakfs to the Board of Wakfs and the Board should therefore be regarded as an agent of the State Government. We are unable to accept this contention. By the Religious Endowments Act 1863, the Government divested itself of the management and superintendence of religious endowments which was vested in (1) [1949] 2 All E. R. 327.

(2) A.I.R. 1963 S.C. 811, 849, 850, paras. 115-117. M1Sup. C. 1167-7 it under Reg. 19 of 1810 and Regulation 7 of 1817. The Board of Wakfs though subject to the control of the State Government, is a statutory corporation and is vested with statutory powers, functions and duties. The Board has power to hold property and is in control of the wakf fund (ss. 9 and 48). The State Government has no concern with the property vested in the Board save during the period of supersession of the Board under s. 64. Nor is the State Government liable for any expenditure incurred by the Board in connection with the administration under the Act (S. 54). The Board of Wakfs is not discharging a governmental function. The Act nowhere says that the Board would act as the agent of the State Government. It rather indicates that the Board is not the agent of the Government and the Government is not responsible for its acts. We must, therefore, hold that the Board of Wakfs is not an agent of the State Government and a suit instituted by it for the recovery of a wakf property is not a suit by or on behalf of the State Government.

Counsel next submitted that the mutawalli is the agent of the State Government and that in any event the limitation for a suit by the mutawalli starts on the date of his appointment. In support of this contention counsel relied upon the decision in Jewun Doss Sahoo v. Shah Kubeer-ood _ Deen,(1) where the Privy Council held that under the law then in force it was the duty of the Government to protect endowments and the mutawalli in that case was the procurator of the Government and his right to sue arose on his being appointed mutawalli. This ruling of the Privy Council was given under Regulation 19 of 1810. Since the passing of the Religious Endowments Act 1863, the mutawalli cannot be regarded as a procurator of the Government. He is not appointed by the Government, nor does he manage the endowment on its behalf and a suit by him for the recovery of the wakf property cannot now be regarded as a suit on its behalf, see Shaikh Laul Mahomed v. Lalla Brij Kishore (2) and Behari Lal & Ors. v. Muhammad Muttaki(3). If the wakf while in possession of its property is dispossessed, it has an immediate right to sue for recovery of the property and the limitation for the suit begins to run. On his appointment, the mutawalli acquires no new right of suit and his appointment does not give him a fresh starting point of limitation for the recovery of the property. The suit, therefore, is not by or on behalf of the State Government and art. 149 has no application. The suit is governed by art. 142. The date of dispossession of the wakf is the starting point of limitation under this article. It was suggested that

as limitation did not run under the Hyderabad Limitation Act, the date when the Indian Limitation Act 1908 came into force in Hyderabad should be regarded as the starting point of limitation. This suggestion has no force. During the currency of the Hydera-

(1) 2 Moo.1.A. 390 at p.222 (2) 17 Weekly Reporter (Sutherland) 430.

(3). I.L.R 20 All 482, 488.

bad Limitation Act, limitation did not run but the Act did not change the date of dispossession. That date was September 20, 1937. For the purposes of art. 142 of the Indian Limitation Act 1908, that date must be regarded as the starting point of limitation.

We may now briefly notice two contentions based on ss.14 and 15 of the Indian Limitation Act, 1908 On August 13, 1941 the defendants instituted a suit for a declaration of there title to the property and obtained an injunction restraining the enrolment of the property in the Book of Endowment. On March 10, 1942, the suit was dismissed. On May 18, 1942, the property was enrolled in the Book of Endowment. On May 21, 1942, summary proceedings for the recovery of the property by the dargah were started under s. 14 of the Hyderabad Endowment Regulation before the Addl. Chief Judge, City Civil. Court, Hyderabad at the instance of the Director, Ecclesiastical Department of the Government of Hyderabad. On June 20, 1942, the defendants filed in the High Court an appeal from the decree dismissing their suit and obtained an interim injunction restraining their eviction from the property. On July 25, 1942, the interim injunction was made absolute. By an order dated February 14, 1942, the Addl. Chief Judge consigned the records of the proceeding under s. 14 to the record room and directed that action would be taken after the disposal of the case in the High Court. On October 15, 1945 the High Court allowed the appeal and remanded the suit to the trial court for disposal according to law, On August 28, 1948, the trial court dismissed the suit. On September 21, 1955, an appeal filed by the defendants from this decree was dismissed On these facts, it was contended before the High Court that in view of s. 15 of the Indian Limitation Act 1908, in computing the period of limitation prescribed for the suit, the plaintiffs were entitled to exclude the period of time during which ejectment of the defendants in the proceeding under s. 14 of the Hyderabad Endowment Regulation had been stayed by the order of injunction. The High Court rightly pointed out that there was no injunction restraining the institution of the present suit, and the plaintiffs were not entitled to any exclusion of time under s. 15. This contention is no longer pressed. In this Court however for the first time counsel sought to argue that under s. 14 of the Indian Limitation Act 1908 the plaintiffs were entitled to the exclusion of the entire period from May 21, 1942 during which the summary proceeding under the Hyderabad Endowment Regulation was pending. The contention based on s. 14 raises mixed questions of law and fact. It was not raised in the courts below. There is no mention of this contention even in the petition for special leave to appeal or in the statement of case. We think that the plaintiffs ought not to be allowed to raise this contention in this Court for the first time. Counsel submitted that the plaintiffs are entitled to revive and continue the proceeding under s. 14 of the Hyderabad Endowment Regulation. We do not know whether that procceed- ing is still pending. The question whether the plaintiffs are entitled to revive and continue that proceeding under the laws now in force does not arise for consideration in this case and we express no opinion on it. All we need say is that our decision in this appeal will not

affect the right, if any, of the plaintiffs to. revive and continue the proceeding.

As the suit was instituted more than 12 years after the date of dispossession,. it is barred by limitation and must be dismissed. The trial court rightly dismissed the suit. The High Court was in error in reversing this decree. In the result the appeal is allowed. The decree of the High Court is set aside and the decree of the trial court is restored. The suit is dismissed. There will be no order as the costs of this appeal.

G.C. Appeal allowed.