

Bombay High Court

Govinda Bala vs Ganu Abaji on 14 July, 1908

Equivalent citations: (1908) 10 BOMLR 749

Author: B Scott

Bench: B Scott, Heaton

JUDGMENT Basil Scott, C.J.

1. This is a suit which was filed by the plaintiffs to recover possession of certain property which they alleged had come into the possession of the defendants under an order dated the 21st of November 1900 made under Section 332 of the Code of Civil Procedure and they bring this suit under the reservation in favour of such a suit contained in the last paragraph of that section.
2. The suit is brought nearly five years after the passing of the order above referred to and it has been dismissed by the lower appellate Court on the ground that it is barred by limitation under the provisions of Article 14 of the Limitation Act.
3. We are of opinion that it should not have been so dismissed.
4. Article 14 applies to suits "to set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for."
5. In our opinion an order passed by a Judge under Section 332 is not such an act or order as is referred to in Article 14. A Judge exercising his judicial functions is a Civil Court within the meaning of the Limitation Act and is not an officer of Government acting in his official capacity within the meaning of Article 14.
6. It is, however, contended for the respondent that Article 13 applies and that the same period of limitation being prescribed the suit will be barred and the order of the appellate Court dismissing the suit would be right.
7. We are, however, of opinion that Article 13 does not apply to the case, because an order passed under Section 332 restoring possession which has been given in execution of a decree, is an order made by the Court in execution proceedings, and is not an order of a Civil Court in a proceeding other than a suit. This has been expressly decided in the case of Ayyasami v. Samiya (1884) I.L.R. 8 Mad. 82, with which we concur.
8. Being, therefore, of opinion that the suit has been wrongly dismissed upon the preliminary ground of bar under the Article which applies one year's period of limitation, we set aside the decree and remand the case to the lower Court to be disposed of according to law.
9. The appellant will have his costs in this Court and rest of the costs will be costs in the cause.