Supreme Court of India
P.K. Kutty Anuja Raja & Anr vs State Of Kerala & Anr on 1 February, 1996
Equivalent citations: 1996 SCC (2) 496, JT 1996 (2) 167
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
P.K. KUTTY ANUJA RAJA & ANR.

Vs.

RESPONDENT:
STATE OF KERALA & ANR.

DATE OF JUDGMENT: 01/02/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
1996 SCC (2) 496 JT 1996 (2) 167
1996 SCALE (2)14

ACT:

HEADNOTE:

JUDGMENT:

O R D E R This appeal by special leave arises from the judgment and decree of the High Court dated January 4, 1977 made in A.S. No.74 of 1976. The Division Bench of the High Court of Kerala had held that the limitation to lay the suit started to the appellants on January 1, 1968 when the igh Court had earlier delivered the judgment quashing the assessment of agricultural income tax upon the estate of Raja Mananikraman and his estate is liable only to the extent of 1/693 share of that estate. The facts are not in dispute. The agricultural Income Tax Officer has made an assessment of the agricultural income tax to the tune of Rs.84,788.78 for the period between 1.11.1956 to 31.3.1958. It is not necessary to dilate all the facts but suffice to state that for recovery thereof when demand was made, the succeeding Raja made payment in part discharging their liability. On October 12, 1960 a sum of Rs.18069.75 was paid and another successor on December 23, 1960 paid a sum of Rs.21,000/-. As stated earlier, ultimately in O.P. No.2413/65 by judgment and order dated January 1, 1968, the High Court set aside the assessment and the liability to recover the tax was confined only to the extent of 1/693 share of the estate Raja Manavikraman.

The Civil Suit for recovery of the amounts paid by the successors was filed in 1974. The Suit (O.S. No.197/74) was decreed by the trial court in 1976. But on appeal, as stated earlier, the Division Bench held that it was barred by limitation. Thus this appeal by special leave.

Shri A.S. Nambiar, the learned senior counsel appearing for the appellants contended that the appellants had discovered the mistake on October 5, 1971 when this Court dismissed the appeal filed by the State against the orders passed ln O.P.2413 of 1965 and that, therefore, the limitation begins to run from that date. Therefore, the suit was filed within three years and such was not beyond time. The High Court was wrong in holding that the suit was barred by limitation. We are unable to agree with the learned counsel. It is not in dispute that at his behest the assessment was quashed by the High Court in the aforesaid O.P. on January 1, 1968. Thereby the limitation started running from that date. Once the limitation starts running, it runs its full course until the running of the, limitation is intradicted by an order of the Court. Section 3 of the Limitation Act gives a power of entertaining the suit which says that, "Subject to the provisions contained in Section 4 to 24 (inclusive), every suit prescribed period shall be dismissed although limitation has not been set up as a defence."

Therefore, if any period of limitation is to be excluded from the prescribed period of limitation, the party necessarily has to satisfy any of the appropriate provisions in Section 4 to 24 of the Limitation Act, 1963. This is not one of such cases. Under those circumstances, the limitation having begun to run from January 1, 1968, it stood expired by efflux of time after three years. Therefore, from January 2, 1971, the right to recover stood barred by limitation. The pendency of the appeal, unless the operation of the judgment is suspended by this Court, does not amount to suspend the operation of running of the limitation. We do not find any such plea raised by the appellants in this case in that behalf. Therefore, the High Court was right in its finding that the suit was barred by limitation.

It is contended that in The Sales Tax Officer & ors. vs. Kanhaiya Lal Makund Lal Saraf & Ors, [AIR 1959 SC 135 at 142], that when the knowledge was acquired by the party for the first time before the judgment was rendered by this Court in previous litigation, the claim for refund would start from the judgment rendered by this Court. We do not have that fact situation in this case. The appellants is a party to the proceedings and at his instance,the assessment of agricultural income tax was quashed as referred to hereinbefore and having had the assessment quashed the cause of action had arisen to him to lay the suit for refund unless it is refunded by the State. The knowledge of the mistake of law cannot be countenanced for extended time till the appeal was disposed of unless, as stated earlier, the operation of the judgment of the High Court in the previous proceedings were stayed by this Court. The suit, therefore, is barred by limitation.

The appeal is accordingly dismissed. No costs.