

Sawai Singhai Nirmal Chand

Vs

Union of India

Civil Appeal No. 928 of 1963

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

24.09.1965

JUDGEMENT

GAJENDRAGADKAR, C.J. –

The short question of law which arises in this appeal is whether a suit filed in pursuance of O. 21 r. 63 of the Code of Civil Procedure attracts the provisions of s. 80 of the Code. This point arises in this way. One Phool Chand, the predecessor-in-title of the appellant Sawai Singhai Nirmal Chand, instituted a suit against the respondent, the Union of India, in the Court of the Second Additional District Judge, Jabalpur, and obtained a decree on 25-4-1951 for Rs. 24,234-14-0 and proportionate costs with interest @ 4% per annum. The respondent challenged the said decree by preferring an appeal in the High Court. Pending the appeal, the respondent deposited the decretal amount of Rs. 31,849-9-9. On December 14, 1952, Phool Chand withdrew Rs. 28,032-12-0 out of the said amount after furnishing due security in that behalf. Ultimately, the respondent's appeal was partly allowed on June 26, 1954, and the decretal amount was reduced to Rs. 10,971-15-6. In the result, the total decretal amount

On September 4, 1954, the respondent applied for restitution of the said amount and claimed interest thereon. The Second Additional District Judge, Jabalpur, allowed the said application, and in execution of it, the respondent sought for the recovery of the said amount by attachment and sale of certain immovable properties of Phool Chand, mentioned in the application. These properties were accordingly ordered to be attached. But, meanwhile, they had been sold by Phool Chand to the appellant by a registered sale deed executed on January 9, 1953. That is why the appellant objected to the said attachment under O. 21, r. 58 of the Code but his objection was over-ruled and his application was dismissed by the Second Additional District Judge on April 16, 1957. It is this order which has led to the present suit under O. 21 r. 63 of the Code.

Before the appellant filed the present suit on June 23, 1958 in the Court of the First Additional District Judge, Jabalpur, he gave notice to the respondent under s. 80 of the Code on April 12, 1958. In the said suit, he claimed a declaration that the properties in question could not be attached and sold inasmuch as the title in respect of the said properties vested in him by virtue of a valid sale deed executed in his favour by Phool Chand. The appellant also claimed an injunction restraining the respondent from attaching and selling the said properties.

In defence, the respondent raised a plea of limitation. It is common ground that the period of limitation prescribed for a suit under O. 21 r. 63 by Article 11 of the Limitation Act is one year from the date of the order under O. 21 r. 58. The respondent urged that s. 80 of the Code did not apply to the present suit; and so, the period covered by the notice served by the appellant on the respondent

could not be excluded for the purpose of calculating limitation in the present case. It is not disputed that if s. 80 applies to the present suit and the period covered by the notice can be taken into account, the suit is within time. It is also not disputed that if s. 80 does not apply to the present suit and the period of the notice cannot be taken into account, the suit is barred by time; and so, at the preliminary stage, the only question which fell to be determined on the pleadings of the parties was whether s. 80 applies to the present suit. Both the learned trial Judge and the High Court of Madhya Pradesh,

Let us begin by referring to the provisions of O. 21 rr. 58 and 63. O. 21 r. 58 deals with the investigation of claims to, and objections to attachment of, attached properties. It is under this rule that a person whose property is wrongfully attached in execution of a decree passed against another, is entitled to object to the said attachment. On such an application being made, a summary enquiry follows and the attachment is allowed or is not allowed according as the Court trying the application is satisfied that the objector is or is not justified in objecting to the attachment. After the final order is passed one way or the other as a result of the investigation made in such proceedings, r. 63 comes into operation. It provides that where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive. It is thus plain that where

In considering the question whether this suit falls within the purview of s. 80 of the Code, it is necessary to read the relevant portion of s. 80 itself; it provides, inter alia, that no writ shall be instituted against the Government until the expiration of two months next after notice in writing has been delivered to or left at the Office of the authorities specified by clauses (a), (b) & (c); and it further provides that such notice shall state the cause of tiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

It would be noticed that the material words used in s. 80 are wide and unambiguous; they are "express, explicit and mandatory", and it would be difficult to except from their operation any proceeding which can be regarded as a suit against the Government. While dealing with the applicability of s. 80, the question to ask is : is it a suit against the Government or not ? If it is, then s. 80 by the very force of its words must apply. We have already referred to the provisions of O. 21 r. 63. In terms, the said rule provides that the order passed in the investigation proceedings shall be conclusive, subject to the result of a suit which the aggrieved party may institute. So, there can be no doubt that the proceedings which the aggrieved party commences by virtue of the provisions of O. 21 r. 63, are intended to be a suit. In fact, the present proceedings have commenced with the presentation of a plaint as required by s. 26 of the Code; and the very article under which the plea of limitation is raised against t

It is, however, said that the suit under O. 21 r. 63 is a continuation of attachment proceedings and as such, cannot be regarded as a suit proper which is included within the purview of s. 80. In support of the assumption that a suit filed under O. 21 r. 63 is a continuation of attachment proceedings, reliance is placed on the decision of the Privy Council in Phul Kumari v. Ghanshyam Misra. In that case, the Privy Council was dealing with the question of the proper court-fees to be paid for a suit under s. 283 of the Code which was then in force, and which corresponds to O. 21 r. 63 of the present Code. Article 17 of Sch. II of the Court Fees Act (No VII of 1870) with which the Privy Council was dealing was expressly made to apply to "Plaint or Memorandum of Appeal in each of the following suits : 1. To alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent, or of any Revenue Court"; and the Privy Council had to examine the question as to whether a suit fi

In this connection, we ought to bear in mind that the scope of the enquiry under O. 21 r. 58 is very limited, and is confined to questions of possession as therein indicated, while suit brought under O. 21 r. 63, would be concerned not only with the question of possession, but also with the question of title. Thus the scope of the suit is very different from and wider than that of the investigation under O. 21 r. 58. In fact, it is the order made in the said investigation that is the cause of action of the suit under O. 21 r. 63. Therefore, it would be impossible to hold that such a suit is outside the purview of s. 80 of the Code.

It is next contended that no notice can be said to be required for suits under O. 21 r. 63, because the principal object for enacting s. 80 is absent in the case of such suits. The argument is that the requirement about the statutory notice prescribed by s. 80 proceeds on the basis that it is desirable to give such notice to afford the Government an opportunity to consider whether the claims made against it should be settled or not. The Legislature thought that if the Government is informed beforehand about civil actions intended to be taken against it, it may in some cases avoid unnecessary litigation by accepting the claims if it is satisfied that the claims are well- founded. In the case of a suit under O. 21 r. 63, there is hardly any need to give such a notice, because the Government was already a party in the investigation proceedings and it knows what the appellant's case was in regard to the attachment sought to be levied at its instance. Since the respondent knows all about the claim of the appellant

In support of this argument, Mr. Karkhanis has relied on a decision of this Court in *Amar Nath Dogra v. Union of India*. In that case, one of the questions which the Court had to consider was whether, if a suit against the Government is withdrawn and a subsequent suit is filed substantially on the same cause of action, the notice given by the plaintiff prior to the institution of the first suit could be said to satisfy the requirements of s. 80 of the Code in respect of the second suit; and this question was answered in the affirmative. While upholding the appellant's contention that the first notice should serve to meet the requirements of s. 80, this Court, no doubt, observed that the main purpose of giving the notice is to give previous intimation to the Government about the nature of the claim which a party wants to make against it. But we do not see how the purpose or the reason for requiring the notice can alter the effect of the plain words used in s. 80. What this Court held in the case of *Amar Nath D*

It is significant that in a large majority of cases, the plea that the Government raises is that notice is necessary and it is generally contended that the notice being defective in one particular or another, makes the suit incompetent; and in dealing with such pleas, the courts have naturally sought to interpret the notices somewhat liberally and have sometimes observed that in enforcing the provisions of s. 80, commonsense and sense of propriety should determine the issue. It is very unusual for the Government to contend that in a suit brought against it, no notice is required under s. 80. It is plain that such a plea has been raised by the respondent in the present case, because it helps the respondent to defeat the appellant's claim on the ground of limitation. In any case, the contention based on the object or purpose of the notice can hardly assist us in interpreting the plain words of s. 80.

It will be recalled that prior to the decision of the Privy Council in *Bhagchand Dagadusa & Others v. Secretary of State for India in Council and others*, there was a sharp difference of opinion among the Indian High Courts on the question as to whether s. 80 applied to suits where injunction was claimed. The Privy Council held that s. 80 applied "to all forms of suit and whatever the relief sought, including a suit for an injunction". In dealing with the question about the construction of s. 80, the Privy Council took notice of the fact that some of the decisions which attempted to exclude

from the purview of s. 80 suits for injunction, were influenced by the "assumption as to the practical objects with which it was framed". They also proceeded on the basis that s. 80 was a rule of procedure and that any construction which may lead to injustice is one which ought not be adopted, since it would be repugnant to the notion of justice. Having noticed these grounds on which an attempt was judicially made to excep

It appears that on this question, there has been a divergence of judicial opinion in India. But, in our opinion, the view that suits under O. 21 r. 63 did not attract the provisions of s. 80, is inconsistent with the plain, categorical and unambiguous words used by it.

The result is, the appeal is allowed, the decree passed by the courts below is set aside and the suit is remanded to the trial Court for disposal in accordance with law. The appellant would be entitled to his costs from the respondent in this Court and in the High Court. Costs in the trial court would be costs in the suit.

Appeal allowed.

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