SUPREME COURT OF INDIA

India Electric Works Ltd.

Vs.

James Mantosh

C.A.No.1646 of 1966

(J. C. Shah, K. S. Hegde and A. N. Grover, JJ.)

15.09.1970

JUDGEMENT

GROVER, J.:-

(For himself and on behalf of Shah C. J.).

1. This is an appeal by certificate from a judgment of the Calcutta High Court in which the sole question for determination is whether the suit was barred by limitation.

2. The material facts may be stated. The appellant before us was the defendant in a suit for recovery of damages with interest and costs. The suit was decreed by the trial judge and that decree has been upheld by the High Court. The defendant was a tenant under the predecessor of the plaintiffs in respect of the shed and structures described in Schedule A of the plaint. In or about the year 1939 the predecessor-in-interest of the plaintiffs filed a title suit in the Court of the Subordinate Judge,

Alipore for ejectment and damages. A compromise took place between the parties but the defendant did not vacate the premises in terms of the compromise and continued to remain in occupation of the same. The property was requisitioned under Rule 75-A of the Defence of India Rules and Government took its possession on February 2, 1944. It was dere quisitioned on November 21, 1945. For the period from February 2, 1944 to November 21, 1945 the plaintiffs received monthly compensation from the government at the rate of Rs. 350/-. For the period of the defendant's alleged wrongful occupation the plaintiffs filed two suits against the defendant. The first was for and recovery of damages upto February 1, 1944 and the second was for damages from November 22, 1945 upto November 21, 1948. The plaintiffs also claimed future damages till recovery of possession although the suit was not one for possession. The suits were decreed by the learned Subordinate Judge in December 1951 at the rate of Rs. 300/- per month for the entire period of claim. In other words the claim for future mesne profits was also allowed. On appeal the High Court disallowed the claim for future mesne profits and reduced the rate to Rs. 200/- per month. The judgment disposing of those appeals along with certain other appeals which arose out of a suit filed by the defendant with which we are not concerned in the present appeal is reported in India Electric Works Ltd. v. Mrs. B. S. Mantosh, AIR 1956 Cal 148 at p. 155. This is what was observed in that judgment with regard to the decree relating to future mesne profits at page 155:-

"The rest of the decree in Suit No. 28 of 1948 was not according to law and cannot be maintained. The suit was a pure money suit and not a suit for recovery of possession of immovable property and for mesne profits under Order 20, Rule 12, Civil P. C. In such a suit a preliminary decree may be passed for possession and for assessment, but in a pure suit for recovery of money, no decree can be passed for recovery of compensation after the date of the suit upto the date of the decree or after the date of the decree until recovery of possession. This part of the decree should, therefore, be set aside."

The plaintiffs then filed a suit on November 5, 1956 for recovery of an amount of Rs. 28,650/- together with interest thereon as damages at the rate of Rs. 300/- per month from November 22, 1948 to November 5, 1956 i.e. a period of 7 years, 11 months and 15 days. For the period beyond 3 years of the suit protection from limitation was claimed primarily under Section 14 of the Indian Limitation Act, 1908, hereinafter called the "Act" and on general principles of suspension of limitation owing to the pendency of the earliar suits. The defendant contested the suit principally on the ground that it was barred by limitation. The rate at which damages were claimed was also disputed. The trial Court was of the opinion that the plaintiffs were entitled to the benefit of Section 14 of the Act and that no part of the claim was barred by limitation. As regards the rate of compensation or damages the trial court fixed it at Rs. 250/- per month and decreed the suit accordingly.

3. The defendant appealed to the High Court. The High Court considered the question of the applicability of Section 14 and held that the plaintiff could take advantage of it. The rate of damages which had been determined by the trial Court was also upheld.

The admitted and proved facts are that the claim made in the present suit was included in the previous money suit No. 28 of 1948 and a decree had been passed by the trial Court in favour of the plaintiffs for the entire claim including the claim for future damages. The plaintiffs were only required to pay additional court fee as provided by the Indian court Fees Act for the claim relating to future damages and the plaintiffs had in fact paid the required amount of additional Court fee. The High Court in the judgment mentioned before and in the portion extracted there from had negatived the claim for future damages on the sole ground that no decree could be granted for recovery of compensation after the date of suit or after the date of the decree in a pure money suit. In other words it was held that under the law the Court was not competent to decree such a suit.

4. Section 14 in so far as it is material for our purpose runs as follows:-

Section 14 (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.

(2) .....

Explanation I.....

Explanation II .....

Explanation III- For the purpose of this section misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

The High Court having found that the present claim of the plaintiffs was also included in the previous suit the condition that the previous proceedings should be founded upon the same cause of action must be held to have been satisfied. The High Court has further held that the previous suit had been prosecuted in good faith and with due diligence. In order to attract the applicability of Section 14 (1), therefore, all that has to be determined is whether the Court in which the previous suit was filed was unable to entertain the claim relating to future mesne profits "from defect of jurisdiction" or "other cause of a like nature". It is common ground and indeed cannot be argued nor has any attempt been made to urge such a contention before us that the Court trying the previous suit was unable to entertain it from defect of jurisdiction. The only question for determination is

whether the Court was unable to entertain the previous suit from "other cause of a like nature". In Jai Kishan Singh v. The Peoples Bank of Northern India, ILR 1944 Lah 451 = (AIR 1944 Lah 136 (FB)) it was pointed out that Section 14 of the Act will have no application where failure on the part of the petitioner or the plaintiff to get the reliefs which he asked for was not attributable to anything connected either with the jurisdiction of the Court or with some other defect which was like that of jurisdiction. It was observed that the words "or other cause of a like nature", however liberally construed, must be read so as to convey something ejusdem generis or analogous to the preceding words relating to the defect of jurisdiction. If these words were read along with the expression "is unable to entertain", they would denote that the defect must be of such a character as to make it impossible for the Court to entertain the suit or application either in its inception or at all events as to prevent it from deciding it on the merits. In other words, if the defects were of such a nature that they had to be decided before the case could be disposed of on merits or if they did necessitate an examination of the merits of the case they would be defects of a "like nature." The cases which were decided on the principle that if a plaintiff or a petitioner failed to establish a came of action in himself no deduction of time could be allowed under Section 14 were noticed and it was accepted that they proceeded on a correct view. Illustration of the facts which would be covered by the words "or other cause of a like nature" as given in the decided cases were: (i) if a suit had failed because it was brought without proper leave; (ii) if it had failed because no notice under Section 80, Civil Procedure Code, had been given; (iii) where it would fail for non-production of the Collector's certificate required by Section 7 of the Pensions Act. In each one of these cases the Court did not lack jurisdiction in its inception but the suit could not be proceeded with and disposed of until the statutory conditions laid down had been satisfied or fulfilled.

5. Mention may be made of two cases which are apposite out of the numerous decisions relating to the point under consideration. In Srimati Nrityamoni Dassi v. Lakhan Chandra Sen, ILR 43 Cal 660 = (AIR 1916 PC 96) the plaintiffs were defendants in a suit brought at a prior stage. In trial suit they associated themselves with the plaintiffs and prayed for adjudication of their rights. Henderson J., of the Calcutta High Court who tried the suit decreed the claims of the plaintiffs and made a similar decree in favour of the defendants. The High Court in its appellate jurisdiction, while affirming the findings of Henderaon J., held that the decree granted by him in favour of the defendants could not be maintained. The decree was consequently varied and the defendants in that suit were relegated to a fresh suit for the relief to which they were clearly entitled. In the subsequent suit the question of the bar of limitation arose. This is what was observed by their Lordships with regard to the claim that the prior period could be deducted for the purpose of limitation:

"It was an effective decree made by a competent Court and was capable of being enforced until set aside. Admittedly if the period during which the plaintiffs were litigating for their rights is deducted their present suit is in time. Their Lordships are of opinion that the plea of limitation was rightly overruled by the High Court." In Sarojendra Kumar Dutt v. Purnachandra Sinha, AIR 1949 Cal 24 S. R. Das J. (as he then was) expressed the view that the principle of Section 14 was applicable not only to cases where the person brought his suit in the wrong Court but also applied where he brought his case in the right Court although he was prevented from getting a trial on the merits by something which, though not a defect of jurisdiction, was analogous to that defect. There an attorney had made an application under Chapter 38, Rule 48, Original Side Rules of the Calcutta High Court, for an order against his client for payment of the sum allowed on taxation. As

discretion was conferred by the Rule to either make an order for payment or to refer the parties to a suit the matter was referred to a suit in view of the facts of the case. The learned Judge held that the plaintiff's right had not been investigated in the Chamber Application because it was considered that it was a proper case where the attorney should be relegated to a suit. It was, therefore, by reason of an infirmity or defect of jurisdiction that the order for payment could not be made. The defect of jurisdiction was in no way brought about by the plaintiff or by any absence of diligence or good faith on his part. He was found entitled to the benefit of Section 14 of the Act.

6. It is well settled that although all questions of limitation must be decided by the provisions of the Act and the courts cannot travel beyond them the words "or other cause of a like nature" trust be construed liberally. Some clue is furnished with regard to the intention of the legislature by the Explanation III in Section 14 (2). Before the enactment of the Act in 1908 there was a conflict amongst the High Courts on the question whether misjoinder and non-joinder were defects which were covered by the words "or other cause of a like nature". It was to set at rest this conflict that Explanation III was added. An extended meaning was thus given to these words. Strictly speaking misjoinder or non-joinder of perties could hardly be regarded as a defect of jurisdiction or something similar or analogous to it.

7. In our judgment the present case is very similar to the one decided by the Privy Council in ILR 43 Cal 660 = (AIR 1916 PC 96). There an effective decree had been made by Henderson J., of the Calcutta High Court which enured to the benefit of the defendants but the appellate Court considered that such a decree could not have been legitimately made and set it aside. The period of the previous litigation was held to be deductible apparently under the provisions of Section 14 (1) of the Act. In the case before us the trial Court had passed a decree in the money suit of 1948 for recovery of future mesne profits. The High Court on appeal set aside that decree on the ground that no such decree could have been passed in a pure suit for recovery of money. The benefit of Section 14 (1), therefore, was rightly allowed by the High Court in the judgment under appeal. Even if the test propounded in the Lahore Full Bench decision in the 1944 Lah 451 = (AIR 1944 Lah 136 (FB)) is to be applied there can be no manner of doubt that the defect in the suit of 1948 was of a nature which had to be decided before the claim could be disposed of on the merits. The High Court there was called upon to decide whether the claim was at all entertainable on the frame of the suit and it came to the conclusion that the Court was not competent to pass any decree for recovery of future damages or mesne profits in the suit as laid. The defect was of a nature which had to be decided before the merits of the claim could be adjudicated upon nor did any occasion or necessity arise of going into or examining the merits of the aforesaid claim. It could hardly be said that the previous money suit of 1948 was altogether misconceived. As has been pointed out by the High Court, in a later decision of the same Court in Makhan Lal Modak v. Girish Chandra Jana, (1962) 66 Cal WN 692 the view taken was that a claim for mesne profits even without a suit for recovery of possession might well be entertainable. The plaintiffs' claim had not been investigated in that suit because the High Court considered that the Court was not competent to decree such a suit. It was by reason of an infirmity or defect of jurisdiction that there could neither be adjudication of the claim on the merits nor could it be decreed. The defect of jurisdiction had in no way been brought about by the plaintiffs or by any absence of diligence or good faith on their part. They were thus fully entitled to the benefit of Section 14 (1) of the Act.

8. Another principle which has been enunciated in certain decisions of the Privy Council and which is stated to be one of general application has been invoked on behalf of the plaintiffs-respondents- Rangnekar J., in delivering the judgment of the Division Bench in Narayan Jivaji Patil v. Gurunathgouda Khandappagouda Patil, ILR 1939 Bom 173 = (AIR 1939 Bom 1), discussed at length the various pronouncements of the Privy Council and deduced the principle that where a claim was satisfied either by agreement of parties or by decree of the Court and if the satisfaction or decree was set aside subsequently in a judicial proceeding a fresh cause of action would accrue in favour of the claimant. In the present case it could be said that the cause of action for future mesne profits was satisfied by the decree which had been granted by the trial Court in the money suit of 1948. The High Court, however, in the appeals decided by it by means of the judgment in AIR 1956 Cal 148 delivered on June 30, 1955 had set aside that decree. A new cause of action accrued in favour of the plaintiffs from the date of that judgment . It is, however, unnecessary to rest our decision on the principle relied upon by Rangnekar J. in the Bombay case because we are satisfied that the plaintiffs were entitled to deduction at time under Section 14 (1) of the Act.

9. The appeal fails and it is dismissed with costs.

10. **HEGDE, J.:-**

Though on the plain language of Section 14 (1) of the Limitation Act, I would have had no hesitation in holding that the plaintiff cannot avail himself of the benefit of that provision, as a misconceived suit, such as the one he filed earlier claiming future mesne profits in a money suit cannot be said to be a claim which the Court was unable to entertain from defect of jurisdiction or other cause of alike nature yet in view of the decision of the Judicial Committee in Mst. Ranee Surno Moyee v. Shooshee Mokhee Burmonia, (1867-69) 12 Moo Ind App 244 which decision has been followed in the later decisions of the Judicial Committee as well as in several decisions of High Courts, I am of the opinion that it is not in public interest to disturb a question of law which has held the field for a long time. The decision of the Judicial Committee referred to earlier held that a claim which is satisfied, an expression held to include even getting of a decree on a claim, if reopened because of the decree of the appellate Court or otherwise, a new cause of action accrues to the plaintiff on the date the earlier satisfaction is taken away. Applying that rule to the facts of the present case a new cause of action must be deemed to have accrued to the appellant in respect of the mesne profits under dispute once the decree of the trial Court was set aside by the High Court. For this reason I agree with the order proposed.

Appeal dismissed.