Rabindra Nath Samuel Dawson

Vs

Sivakasi and Others

Civil Appeal No. 640 of 1967

(K. S. Hegde, P. Jagmohan Reddy, D. G. Palekar JJ)

20.01.1972

JUDGMENT

JAGANMOHAN REDDY, J. -

1. This appeal is by certificate against the judgment of the Madras High Court allowing the appeal and setting aside the judgment and decree of the Principal Subordinate Judge, Nagarcoil, granted in favour of the appellant on the ground that it is barred by limitation and that the appellant cannot be allowed under Section 14 of the Indian Limitation Act, 1908, to exclude the period during which he was prosecuting an earlier suit and appeal as it could not be said to be prosecuted bona fide.

2. The properties which were the subject-matter of litigation were situated in the erstwhile State of Travancore and belong to the Sub Tarvadh of respondents Nos. 1, 2, 3, 9 and 10 (original defendants Nos. 1 - 5). They were brought to sale for arrears of land revenue and items Nos. 1 and 2 were purchased by A. Mudaliar. The sales were confirmed, sale sanads were issued and the possession of the said items was delivered to the purchaser. Thereafter the purchaser A. Mudaliar sold them to C. T. Mudaliar who in turn sold the properties to the first plaintiff by a registered sale deed. Items Nos. 3, 4, 5 and 6 were similarly sold through revenue sale at different times and were purchased by Shabul Hameed. The sales were confirmed, sale sanads were issued and possession of the said items delivered to the purchaser. All the items were also sold to the first plaintiff who became the owner of and alleged to be in possession of all the items Nos. 1 to 6. The mutation in respect of the items was also said said to have been effected in the Revenue Records in plaintiff's name and ever since then the plaintiff says he has been paying the Government taxes thereon. It is further alleged that the plaintiff leased these lands to the 6th defendant who paid the rent for one crop and when the plaintiff demanded rent for the other crops the 6th defendant informed him that defendants Nos. 1 - 5 were demanding the rent as they alleged they were entitled to it. In view of this information, plaintiff made enquiries and found that defendants Nos. 1 - 5 had applied to the Chief Revenue Authority for setting aside the sales and that the said authority without notice to the purchasers or to himself had set aside the sales.

3. A suit was, therefore, filed against defendants Nos. 1 to 5 in District Munsif's Court, Nagarcoil, being O.S. 482 of 1946 for a declaration that the orders setting aside the sales were without jurisdiction and void for non-conformity with Section 50 of the Travancore Revenue Recovery Act and also on other grounds. As the 6th defendant was colluding with defendants Nos. 1 - 5 he was also made a party. An objection was taken by the defendants that the suit was not maintainable without making Government a party. This contention was negatived by the District Munsif. A revision against that decision was filed in the High Court and when the matter came up for hearing the learned advocate for the plaintiff-respondent stated on his behalf that the Government was not a

necessary party to the suit; that he was not prepared to implead the State as a party to the suit and that he was prepared to take the risk of not impleading the State as a party. On this representation by the plaintiff-respondent that he was prepared to take the risk of not impleading the State the High Court dismissed the Revision Petition. After the case was remanded the District Munsif tried the suit and passed a decree in favour of the plaintiff on June 30, 1952. Defendants Nos. 1 - 5 appealed to the District Court but the same was dismissed on October 24, 1953. Against this judgment a second appeal was filed and it was heard by Full Bench of the Travancore Cochin High Court which by its judgment held that the Government was a necessary party and that by reason of the failure of the plaintiff to implead the Government the suit was not maintainable. In this view the appeal was allowed and the suit dismissed.

4. After the suit was dismissed the plaintiff gave a suit notice to the Government under Section 80 of the Code of Civil Procedure and thereafter filed a suit in the Court of the Principal Subordinate Judge, Nagarcoil, of a similar nature as that earlier filed in the District Munsif's Court. During the pendency of the suit the plaintiff died and plaintiffs Nos. 2 - 6 were impleaded as his legal representatives who are the appellants in this case. Defendants Nos. 1 - 5 as also the State of Madras, the 7th defendant, apart from raising the various defences, contended that the suit was barred by limitation in respect of which an issue was raised. The Subordinate Judge held on this issue that the suit which was filed on March 26, 1957, though filed long after the expiry of 12 years from the dates of next revenue sales nonetheless, was not barred because the plaintiff would be entitled to exclude under Section 14 the time spent in prosecuting the earlier suit in computing the period of limitation and after this period was excluded the suit would be in time. Some of the other issues were also decided in favour of the plaintiff. Consequently the Subordinate Judge decreed the suit with past and future mesne profits. In appeal the High Court of Madras, as stated earlier, came to a different conclusion on the question of limitation. It held, agreeing with the findings of the Subordinate Judge, that the auction purchasers in revenue sales never took possession nor were their alienees or plaintiff ever in possession of the suit properties. After this finding the High Court proceeded to consider whether the appellant was entitled to exclude the time taken in the prosecution of the previous suit under Section 14 of the Limitation Act. It was contended before that court that the plaintiff was bona filed in filing his suit and prosecuting it and the appeal, and therefore, he was entitled to exclude that period under Section 14 of the Limitation Act. This contention was negatived with these observations :

> "From what we have stated above, it will be plain that the appellant took objection to the non-impleading of the Government as a party at earliest possible opportunity. The respondents would not take note of that objection. They persisted in their attitude till ultimately the High Court of Travancore-Cochin held that the suit will have to fail for the non-impleading of the necessary party. A request was made to the High Court to permit the respondents herein to remedy the defect. The learned Judges held that they could not accede to that request and that the suit has to be dismissed 'as in spite of timely objection raised by the defendant on the ground of non-joinder of parties the plaintiff persisted in proceeding with the suit undertaking to bear the risk of not impleading the sircar'. This attitude on the part of the respondents is sufficient to dispose of the question of bona fides against them. Mr. V. V. Raghavan argues that the fact that two Subordinate Courts in the previous litigation had held that there was no need to implead the Government as a party to the suit would itself show that the respondents were acting under bona fide mistake. As we have pointed out earlier the defendants took objection to the non-impleading of the necessary party even at the earliest stage. The matter went up to the Travancore High Court. The respondents did

not want the High Court to decided the question as to whether the Government was a necessary party or not on the ground that they were prepared to take the risk of their omission to implead the Sircar and on that ground got a dismissal of the revision petition filed by the appellants. Under these circumstances we cannot accept the contention now urged on behalf of the respondents herein that they bona fide instituted the previous suit."

The reasons given by the High Court are in our view cogent. Section 14 of the repealed Limitation Act which is applicable to this case gives benefit to a party who has been prosecuting with due diligence another civil proceeding whether in a court of first instance or in a court of first appeal against the defendant, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a court which from the defect of jurisdiction and is prosecuted in good faith in a court which from the defect of jurisdiction or other cause of like nature is unable to entertain it. The appellant's advocate points out that under Section 2(7) nothing shall be deemed to be done in good faith which is not done with due care and attention and that in this case the appellant was bona fide in purchasing the suit properties from an auction purchaser who also purchased them in revenue sales bona fide and that without notice to either of them the sale has been set aside which is totally without jurisdiction and injuriously affects the appellant. That the appellant was caught in this predicament may be unfortunate but insofar as the question whether he bona fide prosecuted the earlier suit and appeal there could be no two opinions on the undisputed facts which have been clearly and forcefully stated by the High Court. It is clear that no suit for declaration and possession could have been filed against the defendants in respect of the revenue sales which was set aside without impleading the Government. The objection as to the maintainability of the suit was taken at the very initial stage but that was resisted and the appellant invited a decision by the District Munsif. Even at the stage of revision against that order in the High Court he took the risk of proceeding with the suit. This was, therefore, not a case of prosecuting the previous proceedings bona fide. But on the other hand, he deliberately did so may be for obvious reason that if he had to withdraw the suit he would have to give notice under Section 80, C.P.C. to the Government, wait for the expiry of the period of notice of two months and thereafter file a fresh suit. To avoid this he though he would taken a chance but that chance boomeranged against him. It is not a case where he prosecuted due to ignorance of law or bona fide mistake nor can it be said that he had misconceived the suit. None of the cases cited by the learned advocate can assist the appellant because in all of them it was either a case of mistake of law on a doubtful point such as in the case of Bishambhur Haldar v. Bonomali Haldar and Others, (ILR (1899) 26 Cal 414 : 3 CWN 233) or ignorance of law.

5. We do not think, having regard to the facts and circumstances of this case, that there is any justification for the application of Section 14 of the Limitation Act and in this view the appeal is dismissed with costs.

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