

Mahendra Kumar and Another

Vs

State of Madhya Pradesh and Others

Civil Appeal No. 4053 of 1985

(V. B. Eradi, M. M. Dutt JJ)

04.05.1987

JUDGMENT

DUTT, J. -

1. This appeal by special leave is directed against the judgment of the Madhya Pradesh High Court, whereby High Court affirmed the order of the District Judge, Bhopal, dismissing the counter-claim by the appellants on the ground that it was barred by Section 14 of the Indian Treasure Trove Act, 1878, hereinafter referred to as 'the Act'. The High Court also held that the counter-claim was not maintainable under sub-rule (1) of Rule 6-A of Order VIII of the Code of Civil Procedure, as the same was filed by the appellants after the filing of the written statement.

2. The predecessor-in-interest of the appellants, namely, Babulal, purchased a house in Bhopal in the year 1947 from the sons of one Mannulal. The appellants and the respondents 6 to 8 are the sons of the other three brother of Mannulal. In the year 1976, the respondents 2 to 5, who were the heirs and legal representatives of the said Babulal, started reconstructing or renovating the house and for that purpose they commenced digging the plinth. In the course of digging, a treasure consisting of gold and silver ornaments and also government currency notes amounting to Rs. 2900 was found. The respondents 2 to 5 intimated the discovery of the treasure to the Collector of the District, who issued a notification under Section 5 of the Act requiring all persons claiming the treasure, or any part thereof, to appear personally or by agent before him on the day and place mentioned in the notification. Pursuant to the said notification, the respondents 2 to 5, and the appellants and the respondents 6 to 8 filed claims before the Collector. It has been held by the Collector that the respondents 2 to 5, the finders of the treasure, are the owners of the house from where the treasure was found during excavation under-taken by them with a view to starting reconstruction, and he permitted them under Section 8 of the Act to institute a suit in the civil court to establish their right before February 22, 1979.

3. The respondents 2 to 5 instituted a suit being Civil Suit No. 1-A of 1979, in the Court of the District Judge, Bhopal, for a declaration of their title to the treasure found by them. The respondents 2 to 5 did not, however, make the other claimants before the Collector including the appellants, parties to the suit. The appellants and the respondents 6 to 8 made an application for their addition as parties to the suit under the provision of Order I, Rule 10 of the Code of Civil Procedure. The learned District Judge allowed the said application and, accordingly, they were made defendants in the suit.

4. Thereafter, the appellants and the respondents 6 to 8 filed their written statement, inter alia, denying the claim of the respondents 2 to 5 to the treasure. They claimed title to the treasure.

5. After the filing of the written statement, the appellants filed a counter-claim claiming title to the treasure. It is not necessary for us to state the basis of the claims of the parties to the treasure. The respondents 2 to 5 filed an application praying that the counter-claim should be dismissed contending that it was barred by limitation as prescribed under Section 14 of the Act and that it was also not maintainable under Order VIII, Rule 6-A(1) of the Code of Civil Procedure. The learned District Judge came to the finding that the counter-claim was barred by Section 14 of the Act and, in that view of the matter, dismissed the counter-claim. Being aggrieved by the said order of the learned District Judge, the appellants and the said respondents 6 to 8 moved the High Court in revision against the same. The High Court upheld the order of the learned District Judge that the counter-claim was barred by limitation as prescribed by Section 14 of the Act. The High Court further held that the counter-claim having been filed after the filing of the written statement, it was not maintainable under Order VIII, Rule 6-A(1) of the Code of Civil Procedure. Hence this appeal by special leave.

6. At this stage, it is necessary to refer to some of the provisions of the Act. Section 4 of the Act provides, inter alia, for the giving of notice by the finder of treasure to the Collector containing the details of the treasure. The treasure may be deposited in the nearest Government Treasury or the finder may give the Collector such security as the Collector thinks fit to produce the treasure at such time and place, as he may, from time to time, require. Under Section 5, the Collector shall, after making such enquiry, if any, as he thinks fit, issue a notification requiring the claimants to the treasure to appear before him on a day and at a place mentioned in the notification, such day not being earlier than four days or later than six months, after the date of the publication of such notification. Section 6 provides that any person having claimed any right to such treasure or any part thereof, as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under Section 5, shall forfeit such right. Section 7, 8, 9, 13 and 14 which are relevant for our purpose are extracted below :

7. On the day notified under Section 5, the Collector shall cause the treasure to be produced before him, and shall enquire as to and determine -

(a) the person by whom, the place in which, and the circumstances under which, such treasure was found; and

(b) as far as is possible, the person by whom, and the circumstances under which, such treasure was hidden.

8. If, upon an enquiry made under Section 7, the Collector sees reasons to believe that the treasure was hidden within one hundred years before the date of the finding, by a person appearing as required by the said notification and claiming such treasure, or by some other person under whom such person claims, the Collector shall make an order adjourning the hearing of the case for such period as he deems sufficient, to allow of a suit being instituted in the civil court by the claimant, to establish his right.

9. If upon such enquiry the Collector sees no reason to believe that the treasure was so hidden; or

if, where a period is fixed under Section 8, no suit is instituted as aforesaid within such period to the knowledge of the Collector; or

if such suit is instituted within such period, and the plaintiff claim is finally rejected;

the Collector may declare the treasure to be ownerless.

Appeal against such declaration

Any person aggrieved by a declaration made under this section may appeal against the same within two months from the date thereof to the Chief Controlling Revenue Authority.

Subject to such appeal, every such declaration shall be final and conclusive.

13. When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as owner of the place where such treasure was found, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Collector shall retain such treasure and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a civil court.

14. Any person who has so appeared and claimed may, within one month from the date of such order, institute a suit in the civil court to obtain a decree declaring his right; and in every such suit the finder of the treasure and all persons disputing such claim before the Collector shall be made defendants.

7. Under the scheme of the Act, two kinds of suits can be filed at two stages, namely, one under Section 8 and the other under Section 14 of the Act. Section 8 provides that if the Collector has reason to believe that the treasure was hidden by any person appearing before the Collector within one hundred years or by some other person under whom such person claims, the Collector shall adjourn the hearing for such period as he deems sufficient to allow the claimant to institute a suit to establish his right to the treasure. So under Section 8, the suit has to be filed by the claimant within the period for which the hearing of the case is adjourned for the establishment of his right to the treasure.

8. On the other hand, the question of filing a suit under Section 14 will not arise unless the Collector makes a declaration under Section 9 that the treasure is ownerless. Such a declaration under Section 9 will be made by the Collector if he sees no reason to believe that the treasure was not hidden within one hundred years or if no suit is instituted under Section 8 within the period for which the hearing is adjourned by the Collector or if the plaintiff's claim is rejected. An appeal lies against a declaration by the Collector to the Chief Controlling Revenue Authority and subject to the appeal, such declaration shall be final and conclusive. If, however, no such contingencies as mentioned in Section 9 take place, the Collector will have no jurisdiction to make a declaration that the treasure is ownerless.

9. If, however, any of such contingencies happens and the Collector makes a declaration under Section 9 and two or more persons have appeared before the Collector each claiming the ownership of the place where such treasure was found or the finder of treasure disputes the right of any person who has so appeared and claimed, the Collector shall make an order under Section 13 staying the proceeding with a view to the matter being enquired into by a civil court. It may be noticed here that the claim made under Section 13 by the rival claimants relate to the ownership of the place and not to the ownership of the treasure for, it has been already noticed that the declaration by the Collector under Section 9 that the treasure is ownerless shall, subject to the appeal to the Chief Controlling Revenue Authority, be final and conclusive. The object of an enquiry as to the ownership of the place by the civil court is necessary inasmuch as Section 10 of the Act provides

inter alia that when a declaration has been made in respect of any treasure under Section 9, such treasure shall either be delivered to the finder or be divided between him and the owner of the place in which it has been found.

10. Thus it is manifestly clear that if no declaration is made under Section 9, there is no question of filing a suit under Section 14 of the Act. While a suite under Section 8 relates to the establishment of the right of the claimant to the treasure a suit under Section 14 relates to the establishment of the ownership of the place where the treasure was found for the purpose of division of the treasure between the finder and the owner of the place.

11. Section 14 lays down that such a suit has to be filed within one month from the date of such order to obtain a decree declaring his right.

12. It is manifestly clear from Section 14 that the suit referred to therein is a suit to be filed by a person for the establishment of his right after the Collector had declared the treasure to be ownerless under Section 9 after making a claim before the Collector, under Section 13. The words "such order" in Section 14, in our view, refer to the order passed by the Collector under Section 13. Further the placement of Section 14 after Section 13 of the Act points only to the filing of the suit by a person after the Collector had made an order staying the proceedings under Section 13. The suit contemplate by Section 8 of the Act has to be filed by the claimant within the period for which the hearing of the case is adjourned. Such period for which the hearing under Section 8 is adjourned by the Collector, may be more than a month. It is absurd to think that although Section 8 provides that the suit has to be filed within the period for which the hearing is adjourned, yet it has to be filed within one month under Section 14. Section 8 and Section 13 and 14 contemplate two different situation. While under Section 8 the suit has to be filed within the period during which the hearing stands adjourned, the suit under Section 14 has to be filed within one month of the order of the Collector under Section 13 of the Act. To hold that suits under Section 8 and Section 13, are both governed by the limitation prescribed by Section 14, will be to do violence to the provision of the Act and the clear intention of the legislature as indicated in the provisions.

13. Another aspect in this regard may be considered. It may be argued that as the Collector had not allowed the appellants and the respondent 6 to 8 to file a counter-claim or a suit, the suit was not maintainable. In our opinion, the question of filing a counter-claim arises after a suit is filed by the claimant under Section 8. It may be that there is no substantial difference between a counter claim and a suit, but nonetheless a defendant cannot be prevented from filing a counter-claim under the Code of Civil Procedure.

14. In the instant case, as the respondents 2 to 5 have instituted the suit within the period during which the hearing before the Collector stands adjourned under Section 8, the question of making a declaration by the Collector under Section 9 of the Act does not arise and consequently, there is no scope for filing any suit under Section 14 of the Act for the establishment of the right to ownership of the place where the treasure was found by respondents 2 to 5. Thus Section 14 has no manner of application to a suit filed under Section 8 of the Act.

15. The next point that remains to be considered is whether Rule 6-A(1) of Order VIII of the Code of Civil Procedure bars the filing of a counter-claim after the filing of a written statement. This point need not detain us long, for Rule 6-A(1) does not, on the face of it, bar the filing of a counter-claim by the defendant after he had filed the written statement. What is laid down under Rule 6-A(1) is that a counter-claim can be filed, provided the cause action had accrued to the defendant

before the defendant had delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not. The High Court, in our opinion, has misread and misunderstood the provision of Rule 6-(1) in holding that as the appellants had filed the counter-claim after the filing of the written statement, the counter-claim was not maintainable. The finding of the High Court does not get any support from Rule 6-A(1) of the Code of Civil Procedure. As the cause of action for the counter-claim had arisen before the filing of the written statement, the counter-claim was, therefore, quite maintainable. Under Article 113 of the Limitation Act, 1963, the period of limitation of three years from the date the right to sue accrues, has been provided for any suit for which no period of limitation is provided elsewhere in Schedule. It is not disputed that a counter-claim, which is treated as a suit under Section 3(2)(b) of the Limitation Act has been filed by the appellants within three years from the date of accrual to them of the right to sue. The learned District Judge and the High Court were wrong in dismissing the counter-claim.

16. For the reasons aforesaid, the appeal is allowed, The order of the learned District Judge and the judgment of the High Court are set aside. The learned District Judge is directed to proceed with the hearing of the suit and the counter-claim in accordance with law. The appellants shall pay court fee on the counter-claim, if not already paid, within such time as may be fixed by the learned District Judge.

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