

SUPREME COURT OF INDIA

Union of India

Vs.

Suresh J. Thanawala

C.A.No.6508-09 of 2001

(K.T. Thomas and S.N. Variava JJ.)

19.09.2001

JUDGMENT

S. N. Variava, J.

1. Leave granted.

2. Heard parties.

3. These Appeals are against a Judgment dated 10th July, 2000 by which an Appeal against an Order dated 17th January, 2000 has been dismissed. By the Order dated 17th January, 2000 the Court has, exercising powers under Order VII Rule 11 (d) of the Code of Civil Procedure, rejected the Plaintiff as being barred by limitation.

4. Briefly stated the facts are as follows: The subject matter of the Suit involves large areas of land situated in and around Mumbai. The Collector of Mumbai purporting to act under Section 20 of the Maharashtra Land Revenue Code passed an Order dated 22nd June, 1995 holding that the lands in question belong to Respondent Nos. 1 and 2. By an Order dated 12th June, 1996 the State Government, acting as the Appellate Authority under the Maharashtra Land Revenue Code, affirmed the said Order.

5. The Appellants then filed Suit on 16th July, 1997 wherein they have made various prayers. One of the reliefs sought is a declaration that they are the owners of the suit land and that Respondents / Defendants have no right, title or interest in the same.

6. Respondents / Defendants filed Notice of Motion No. 399 of 1999 praying for rejection of the Plaintiff filed under Order VII Rule 11(d) of the Code of Civil Procedure. This prayer was based upon Section 20 of the Maharashtra Land Revenue Code which, inter alia, provides as follows:

"20 .(4) Any suit in any civil court after the expiration of one year from the date of any order passed under sub-section (1) of sub- section (2) or, if appeal has been made

against such order within the period of limitation, then from the date of any order passed by the appellate authority, shall be dismissed (though limitation has been not set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that in the case of an order under sub-section (2) the plaintiff has had due notice of such order."

7. This Notice of Motion was allowed and, as stated above, the Plaint was rejected by the Order dated 17th January, 2000. The Appeal came to be dismissed by the impugned Judgment.

8. Undoubtedly, in the Plaint, the Appellants have prayed for condonation of delay of the period of limitation as prescribed under Section 20 of the Maharashtra Land Revenue Code. However, the learned Solicitor General submitted that the main relief is for a declaration that the Appellants are the owners of the suit land. The learned Solicitor General also submitted that the main question would be whether the provisions of Maharashtra Land Revenue Code and Section 20 therein applied to such a Suit. He pointed out that Respondents/Defendants had not even filed a written statement in the suit. He submitted that it was open for the Appellants/Plaintiffs to amend the suit. The learned Solicitor General submitted that the Appellants/Plaintiffs will amend the Plaint, if the suit is restored to the file. He stated that the Appellants/Plaintiffs would move for necessary amendments within a period of 2 weeks from today.

9. We do not express any opinion on merits. However, in our view, this is not a matter which should have been disposed of in such summary manner. The Appellants/Plaintiffs should be allowed to carry out the amendments, which they would have been entitled in law to do so if the Plaint was not rejected.

10. We, therefore, set aside the impugned Order and the Order of the learned single Judge dated 17th January, 2000. The Suit stands restored to the file of the High Court. We permit the Plaintiffs to carry out necessary amendments to the plaint if a motion for it is made within a period of 2 weeks from today. After the amendments are carried out the Respondents/Defendants shall file their written statement within a period of 4 weeks thereafter.

11. We clarify that the Respondents/Defendants will be at liberty to take up any or all contentions. They are at liberty to file an Application raising preliminary objections including objection as to the maintainability of the Suit on ground of limitation. If such an application is filed the High Court is requested to dispose of the same on merits within a period of 6 months from the date of its filing.

12. With these directions the Appeals are allowed. There will be no Order as to costs.