ORISSA HIGH COURT

Koutuki Sabatani

Vs

Raghu Sethi

Second Appeal No. 392 of 1964

(B.K. Patra and S. Acharya, JJ.)

30.10.1969

JUDGMENT

B.K. Patra, J.

1. This is an appeal against a reversing judgment of the Additional Subordinate Judge, Behrampur dismissing the plaintiff-appellant's suit for declaration of title to the suit lands and for an order of injunction restraining defendant No. 1 from interfering with her possession thereof or, in the alternative, for recovery of possession of the lands.
2. According to the plaintiff-appellant, the suit lands are ryoti lands belonging to one Buchi Ram Das, the land-holder of village Dwargam where the lands are situated. Buchi Ram Das had gifted away these lands to the villagers of Dwargam free of rent and since after the grant, the villagers have acquired occupancy right therein. Some time afterwards Buchhiram sold his interest in Dwargam estate to defendant No. 27 Kontho Chowdhury. The latter demanded rent for the lands from the villagers and when they resisted, he started some cases against them and to meet the litigation expenses, the villagers had incurred a loan from the husband of the plaintiff. Ultimately the villagers succeeded in the suit and thereafter they sold the disputed lands to the plaintiff under a registered deed of sale dated 1-5-1957. Since then the plaintiff was in peaceful possession of the lands. Defendant No. 1 however claiming the suit lands as his washerman's service lands began to disturb the possession of the plaintiff over the same and ultimately instituted a proceeding under Section 145 Criminal Procedure Code against her on the ground that the lands belonged to him and were in his possession and that the same had been recorded in his name in the current settlement. It is in these circumstances that the plaintiff filed the suit giving rise to this appeal.

(2A) Defendant no. 1, who alone contested the suit, pleaded that the suit lands were granted to his ancestor by the ex-zamindar of Dwargam for rendering washerman's service and since then the lands are in the possession of his family. His ancestor and after him, defendant no. 1 had been in peaceful possession of the lands till 1960 when the plaintiff made an attempt to dispossess him. He, therefore, instituted a proceeding under Section 145 Criminal Procedure Code which was decided in his favor. He denied the

plaint allegation that either the plaintiff or before her the villagers of Dwargam had ever been in possession of the suit lands.

3. The learned Munsif decreed the suit in favor of the plaintiff, but in appeal by defendant no. 1 the learned Addl. Subordinate Judge held that the plaintiff has failed to establish the title of her, vendors in the suit property. He held on the other hand that defendant no. 1 has established that he has got occupancy right in the suit lands. He, therefore, allowed the appeal and dismissed the plaintiff's suit. Hence this second appeal.

4. A preliminary objection is taken by Mr. H. G. Panda, learned Advocate appearing for the respondent that this appeal having been filed beyond time is barred by Limitation. To appreciate this contention, it is necessary to refer to the following facts in chronological order:

Date of judgment appealed against	18-3-1964
Decree signed	01/04/64
Copy application filed	24-4-1964
Folios called for	25-4-1964
Folios supplied	29-4-1964
Copy ready	13-5-1964
Appeal filed	13-7-1964

5. The contention of Mr. Panda is that a period of 17 days, being the time requisite for obtaining copies in this case, can be excluded in computing the period of limitation for appeal under Section 12 of the Indian Limitation Act 1963 (hereinafter referred to as the Act) and so excluded, the ninety days' period of limitation prescribed for filing the appeal expressed on 2nd July 1964. But as the Court was closed till 7th July, 1964, the appeal ought to have been filed on the 7th July, 64. But as the appeal was filed on the 13-7-64 it is barred by limitation by six days. It is, on the other hand, contended by Mr. Patnaik appearing for the appellant that over and above the period of 17 days referred to above the period from 18-3-1964 when the decree was actually prepared should be included in the period requisite for obtaining the copy of the decree and in that case, the 90 days period of limitation would expire on 18-3-64. But as the appeal is filed on 13th, it is in time. In making the submissions, both the learned Advocates have relied on Section 12 of the Act and particularly on the explanation which has been added in the new Act for the first time. It is therefore necessary to quote Section 12 of the Act.

> "12. Exclusion of time in legal proceedings. - (1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.
> (2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment the day on which the judgment

complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment on which the decree or order is founded shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award the time requisite for obtaining a copy of the award shall be excluded.

Explanation. - In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded."

6. Sub-sections (1) to (4) in the new Act do not materially differ from sub-sections (1) to (4) of the old Act excepting the fact that the old sub-sections did not make any provision for revision while such provision has been made in sub-sections (2) and (3) of the new Act. We are here concerned mainly with sub-section (2) of the new Act. Sub-section (2) as it appeared in the old Act may be quoted for comparison.

"Section 12(2). - In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded."

Where there is an interval of some days between the pronouncement of the judgment and signing of the decree, the question arose under the old Act whether such interval should or should not be excluded in computing the period of limitation for an appeal against the decree. On this point, there was a conflict of opinion between the High Courts, Patna, Calcutta and Bombay High Courts taking the view that the entire period taken by the Court for preparing the decree after pronouncement of the judgment should be included in computing the time requisite for obtaining a copy of the decree irrespective of the fact that whether the application for such copy is made either before or after the decree is prepared; and some other High Courts like Nagpur taking the view that if an application for copy is not made before the decree is prepared by the Court, the period between the date of judgment and the date of preparation of the decree should not be taken as time requisite for obtaining a copy of the decree, and consequently, should not be excluded in computing the period of limitation. In *Jagat Dhish Bhargava v. Jawahar Lal Bhargava*[1], which was a case decided before the new Act came into force, the question arose what the time requisite for obtaining a copy of decree is under Section 12 (2) of the old Act when the decree was not drawn up immediately after the judgment. Shortly stated the facts in that case are that a suit was dismissed on 12-3-1954. On 24-3-1954, an application was made for certified copy of the judgment and decree passed in the suit. It is unnecessary to refer to certain events which took place thereafter. Suffice is to say that an appeal was filed accompanied only by a certified copy of the judgment because the decree had not been drawn up till then and hence no certified copy thereof was issued to the party concerned. The decree was prepared only in

December, 1959 and the certified copy was supplied to the applicant on 23-12-1959 and was filed by him in Court that very day. Their Lordships held that as under Order 41, Rule 1 it is necessary that an appeal has to be accompanied by a copy of the decree appealed from and of the judgment on which it is founded, the appeal in that case must be deemed to have been validly filed on 23-12-1959 when the copy of the decree was filed in Court and this was nearly five and half years after the judgment was delivered. The question arose whether the appeal was in time. This was answered by their Lordships in paragraph 9 of the judgment.

> "(9) The answer to the question as to whether the presentation of the appeal on December 23, 1959, is in time or not would depend upon the construction of Section 12, sub-section (2) of the Limitation Act. We have already noticed that the period prescribed for filing the present appeal is 90 days from the date of the decree. Section 12, sub-section (2), provides, inter alia, that in computing the period of limitation "the time requisite for obtaining a copy of the decree shall be excluded." What then is the time which can be legitimately deemed to have been taken for obtaining the copy of the decree in the present case? Where a decree is not drawn up immediately or soon after a judgment is pronounced, two types of cases may arise. A litigant feeling aggrieved by the decision may apply for the certified copy of the judgment and decree before the decree is drawn up, or he may apply for the said decree after it is drawn up. In the former case, where the litigant, has done all that he could and has made a proper application for obtaining the necessary copies, the time requisite for obtaining the copies must necessarily include not only the time taken for the actual supply of the certified copy of the decree but also for the drawing up of the decree itself. In other words the time taken by the office or the Court in drawing up a decree after a litigant has applied for its certified copy on judgment being pronounced, would be treated as a part of the time taken for obtaining the certified copy of the said decree."

It therefore appears to us that the above view of the Supreme Court is not in consonance with the view taken by the Patna, Calcutta and Bombay High Courts that the entire period taken by the Court for preparing the decree after the pronouncement of the judgment should be included in computing the time requisite for obtaining the certified copy of the decree, but is in consonance with the contrary view that only the time which elapses between the date of application for a certified copy and the date when the decree is signed would be excluded. This is made further clear in paragraph 11 of the judgment where their Lordships say –

> "The position, therefore, is that when the certified copy of the decree was filed by the respondents in the High Court on December 23, 1959, the whole of the period between the date of the application for the certified copy and the date when the decree was actually signed would have to be excluded under Section 12, sub-section (2)" of the old Act. (AIR 1961 SC 832).

It, therefore, follows from this that in computing the time requisite for obtaining a copy of the decree, only the period between the date of application for the certified copy and the date when

the decree was signed was being included therein and the period between the date of the judgment and the date of application for certified copy of the decree was being excluded from such computation. It is against this back-ground that the new Limitation Act was enacted adding to Section 12 of Explanation. The Law Commission in its third Report on the Limitation Act, 1908 expressed its view that the delay in the office in preparing the decree before an application for copy is made should not count in favor of the party and suggested that an Explanation should be added to Section 12 to make it clear. The Explanation suggested by them was this :-

> "Any time taken by the Court to prepare the decree or order before an application for copy thereof is filed shall not be regarded as time requisite for obtaining the copy within the meaning of this Section."

The Explanation suggested by the Law Commission is in accordance with the view expressed by the Supreme Court in AIR 1961 SC 832, referred to above and goes contra to the other view reflected prominently in a case decided by seven learned Judges of the Patna High Court in *Gabriel Christian v. Chandra Mohan*[2], But despite this suggestion of the Law Commission and the draft of the proposed Explanation suggested by them, the Explanation that has ultimately found its place in the Statute is something materially different. It is legitimate to argue that if the Legislature wanted to adopt the view expressed by the Law Commission on this subject and felt the necessity, as did the Law Commission, to add an Explanation to Section 12 to resolve the conflict which then existed between the different High Courts, nothing was easier for them than to adopt the Explanation the Law Commission had suggested. But it appears to us that the Explanation which was actually added to Section 12 of the Act means just contrary to the suggestion of the Law Commission. It is argued that as in the Statement of Objects and Reasons of the new Limitation Act the reason for adding the Explanation to Section 12 was to make it clear that any delay in the office or the Court in drawing up of a decree or order before the application for a copy thereof is made shall not be excluded, the Explanation actually added must be interpreted in such a manner that it would be in accord with the Statement of Objects and Reasons and that therefore the correct interpretation of the Explanation should be to exclude, in computing the time requisite for obtaining a copy of the decree, the interval that elapses between the date of judgment and the date on which the application is made. The meaning to be given to an Explanation must depend upon its terms and no theory of its purpose can be entertained unless it has to be inferred from the language used. We cannot also assume a mistake in an Act of Parliament. If we, do so, we would render many Acts uncertain by putting different constructions on them according to our individual conjectures. The draftsman of the Act may have made a mistake; if that be so, the remedy is lor the Legislature to amend it.

7. After the new Act came into force, the interpretation of the Explanation newly added to Section 12 of the Act came up directly for consideration before a Full Bench of the Patna High Court in the *State of Bihar v. Md. Ismail*[3], The question posed before the Full Bench was whether the time taken by the Court to prepare the decree, before application for copy thereof had been made, should be excluded in favor of the appellant as time requisite for obtaining a copy of the decree, or whether, the time should be excluded from consideration as time not requisite for obtaining a copy of the decree. Mahapatra, J. speaking for the majority favored the first interpretation. The minority view expressed by U. N. Sinha, J. was in favor of the second interpretation, that is to say, the time taken by the Court to prepare the decree before application

for copy thereof is made shall not be excluded in favor of the appellant as time requisite. His Lordship rejected the contention advanced on behalf of the State that the Explanation should mean that the time taken by the Court to prepare the decree before application for copy thereof is made "shall be included" as the time requisite, as the Explanation states that it shall not be excluded, because in his Lordship's view Section 12 is not concerned with any "inclusion" of time at all, but is concerned with "exclusion" of time and therefore it is not possible to interpret the Explanation by holding that the expression "shall not be excluded" means "shall be included" as time requisite for obtaining the copy of the decree. With great respect to the learned Judge, we are unable to accept this reasoning. If the expression "shall not be excluded" does not mean "shall be included," we fail to see how else the time taken by the Court to prepare a decree or order before an application for copy thereof is made is to be treated. In computing the time requisite for obtaining the copy, we cannot exclude the period because the Statute says definitely that it shall not be excluded. If we are to follow the above reasoning of the learned Judge, we cannot also include it in the time requisite. An interpretation which leads to such a situation cannot be accepted. The majority view which did not accept the interpretation of the learned Judge is stated by Mahapatra, J. at page 5 as follows :

> "If we read "shall be included" for "shall not be excluded" in the explanation, there cannot be the slightest doubt that the thing in which the inclusion is meant is the time requisite for obtaining a copy. If the opening words of the explanation would have been "in computing the period of Limitation" as it is in sub-sections (1), (2) and (4), the meaning would have been certainly different. But the language was purposefully different and the whole explanation is about the computation of "the time requisite for obtaining a copy of a decree or an order." I cannot, therefore, see how learned Counsel can successfully contend, on the language of the explanation, that the period, preceding an application for a copy of a decree or an order, shall not be excluded from or shall be included in the period of limitation. The only meaning, in my view that flows from the explanation is that, for purposes of exclusion from the prescribed period of limitation while computing the extent of time requisite for obtaining a copy of the decree or an order appealed from, in all cases, the time taken by the Court to prepare the decree or order before the application for copy thereof is made, shall be taken as a part of the time requisite for obtaining the copy. Besides that, the period otherwise taken for supply of the copy shall also be included in "the time requisite", and that will also be excluded in computing the period of limitation. Both on an analysis of the section and the explanation and on the construction of the sentence in the explanation, this conclusion is inescapable."

On a correct interpretation of the Explanation, as it stands, the majority view aforesaid, if we may say so with respect, appears to us to be the correct view. This is also the view expressed in *Ram Chandra Panda v. K. Dandapani Dora*[4], G. K. Misra, J. (as he then was) relied on the aforesaid decision of the Patna High Court and held that on the plain language of the Explanation, it is clear that the entire time taken by the Court for the preparation of the decree shall be included within the time requisite for obtaining a copy of the decree.

8. The view that a litigant wishing to file an appeal against a decree should not be allowed to take

advantage of a delay in office in preparing the decree before he himself has filed an application for a copy of the decree does not appear to be unreasonable. Take a case where the decree is prepared immediately after the judgment and the would be appellant filed an application for copies a fortnight later. This interval of a fortnight before he files an application for copy is counted against him in computing the period of limitation for appeal and the time taken after such application in furnishing to him the copy of the decree is counted in his favor. The reason is that after he does his duty in applying for the copy, he is not responsible for any delay thereafter in supplying the copy to him. What happens in the office before he files an application is not his concern. This is the view which the Law Commission had taken and which found expression in the Explanation to Section 12 as suggested by them. But having regard to the wording of the Explanation which ultimately found its place in the Statute book, it must be assumed that the Legislature deliberately inserted a beneficial provision in favor of the litigants thereby giving a statutory recognition to the view expressed in the Full Bench decision of the Patna High Court in Gabriel Christian's case, AIR 1936 Patna 45 that the words "time requisite for obtaining a certified copy of the decree appealed from" in Section 12 of the Act mean the time which would have been necessary in any case for obtaining a copy of the decree appealed from.

9. We are, therefore, of opinion that the period between 18-3-1964 and 1-4-1964 should be included in the time requisite for obtaining the copy of the decree and, so included, the appeal is in time and is not barred by limitation.

10. Turning now to the merits of the appeal, the plaintiff-appellant claims her title to the suit property on the basis of the sale deed, Ext. 1 executed in her favor by defendants 3 to 26. The finding of the trial Court that exhibit 1 is genuine was not assailed before the learned Additional Subordinate Judge but its validity was disputed on the ground that the plaintiff has failed to establish that her vendors had title to the property. The learned Subordinate Judge, after an elaborate consideration of the evidence has held that the plaintiff has failed to establish her vendors' title. Nothing has been brought to our notice to show that the finding of the learned appellate Judge on this point is incorrect. We, therefore, find that although the appellant succeeds on the question of limitation, she has no case on merits.

11. In the result, this appeal fails and is dismissed with costs.

Acharya, J.

12. I agree.

Appeal dismissed.

Cases Referred.

[1] AIR 1961 SC 832
[2] AIR 1936 Pat 45
[3] AIR 1966 Pat 1 (FB)
[4](1967) 33 Cut LT 958