

RAJASTHAN HIGH COURT

Syed Inamul Haq Shah

Vs.

State of Rajasthan

Civil Revn. Petn. Nos. 1376 and 1409 of 1997

(V.S. Kokje, J.)

25.09.2000

ORDER

V.S. Kokje, J.

1. These two revision petitions arise from the same suit and since the decision of S.B. Civil Revision Petition No. 1376/97 may affect the decision of S.B. Civil Revision Petition No. 1409/97, therefore, they were heard together and are being decided together.

2. S.B. Civil Revision Petition No. 1376/97 arises out of an order passed by the Additional District Judge No. 5, Jaipur City, Jaipur in Miscellaneous Appeal No. 83/97 on 16-7-1997 rejecting appeal against an order dated 2-7-1997 passed by the Additional Civil Judge (Junior Division) No. 3, Jaipur City, Jaipur in Civil Suit No. 366/97 whereby he had returned the plaint for presentation to proper Court, holding that the jurisdiction of the Civil Court is barred as Section 85 of the Act would also apply to pending suits. S.B. Civil Revision Petition No. 1409/97 arises out of an order passed in the aforesaid suit rejecting an application for marking the document as exhibit.

3. It would be appropriate to take up for consideration S.B. Civil Revision Petition No. 1376/97 first. It raises the point as to the jurisdiction of the civil Court to continue to try a suit filed prior to coming into force of the Wakf Act, 1995 (in short 'Act'). Section 85 of which provides that no suit or other legal proceedings shall lie in any civil Court in respect of any dispute, question or other matter relating to any wakf property or other matter which is required, by or under the Act, to be determined by a Tribunal established under the Act.

4. Learned counsel for the petitioner submitted that Section 85 of the Act cannot be given retrospective effect by applying it to pending suits. According to him in the relevant provisions, the words "shall lie" would mean that no proceedings can be instituted after the coming into force of the Act if the subject matter of the suit or proceeding is required to be dealt with by the Tribunal established under the Act. On the contrary, the contention of the non petitioner is that the words "shall lie' would mean also "shall be continued" and therefore, the bar contained in Section 85 of the Act would apply to pending suits or proceedings also.

5. Section 85 of the Act reads as under :

"85. Bar of jurisdiction of Civil Courts. No suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal."

6. It was not disputed before me that the subject matter of the suit was cognizable by a Tribunal established under the Act and no suit on the same cause of action could have been filed after the coming into force of the Act.

7. In Maxwell on the Interpretation of Statutes, Twelfth Edition, while discussing the retrospective operation of statutes in the light of English case law, it has been observed that, upon the presumption that the legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation. They are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Quoting from *Re- Athlumney* (1898) 2 QB 551 it was observed that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only. The Statute is not to be construed so as to have a greater retrospective operation than its language renders necessary. It has

further been observed that the rule against the retrospective effect of statutes is not a rigid or inflexible rule but is one to be applied always in the light of the language of the statute and the subject matter with which the statute is dealing. Before presumption against retrospectively is applied, a Court must be satisfied that the statute is in fact retrospective. A statute is retrospective which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions of considerations already past. While dealing with the effect of a statute on pending actions, it was observed that in general, when the substantive law is altered during the pendency of an action, the rights of the parties are decided according to law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights. But if the necessary intendment of a statute is to affect the rights of parties to pending actions, the Court must give effect to the intention of the legislature and apply the law as it stands at the time of the judgment even though there is no express reference to pending actions. Discussing the application of the principles of retrospective operation of statutes, in cases of procedural Acts, it was observed that the presumption against retrospective construction has no application to enactments which affect only the procedure and practice of the courts. No person has a vested right in any course or procedure, but only the right of prosecution or defense in the manner prescribed for the time being, by or for the Court in which he sues, and if an Act of Parliament alters that mode of procedure, he can only proceed according to the altered mode. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be.

8. In the Principles of Statutory Interpretation, by Justice G.P. Singh, Seventh Edition 1999 at page 404, the learned author has discussed the effect of retrospective operation of statutes on pending proceedings. It has been observed that a retrospective statute which affects rights in existence is not readily construed to effect adjudication of pending proceedings. (vide *United Provinces v. Atiqa Begum (Mt.)*)¹. The Courts insist that to have that result the language should be sufficiently clear (vide *K.S. Paripooran v. State of Kerala*,)² although it need not be express (vide *K.S. Paripooran v. State of Kerala* (supra), Courts have undoubtedly learned very strongly against applying a new Act to a pending action, when the language of the statute does not compel them to do so" (vide *K.S. Paripooran v. State of Kerala* (supra). Learned author has quoted the passage from *Garikapati v. N. Subbiah Choudhary*,³ where S.R. Das, C.J. had observed that the golden rule of construction is that, in the absence of

anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed. The learned author then went on discussing the cases on the point. In *Smithies v. National Association of Operative Plasterers* ⁴ Section 4 of the Trade Disputes Act, 1906 which enacted that 'an action for tort against a trade union shall not be entertained by any court' was held not to affect disposal of an action commenced before passing of the Act. In *Beadling v. Goll*, ⁵ the Gaming Act, 1922, which had repealed a section of an earlier Gaming Act, was held not to terminate a pending action even though it had enacted that 'no action for the recovery of money under the said section shall be entertained by any Court.' In *Chandrasingh v. Surjitlal*, ⁶ Section 12(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 which enacted that no suit for recovery of possession shall be instituted' was held to be prospective not affecting a suit commenced earlier to the passing of the Act. In *Provincial Government of Madras v. J.S. Basappa*, ⁷ Section 18A of the Madras General Sales Tax Act, 1939, which was inserted by an amending Act of 1951, and which enacted that 'no suit or other proceeding shall be instituted in any Court to set aside or modify any assessment made under this Act.', was held not to apply to suit instituted before the amending Act came into force. In *Venugopala v. Krishnaswami* ,⁸ Section 46(2) of the Government of India Act, 1935, which enacted that "Burma shall cease to be part of India", was construed not to affect the continuance of pending action in an Indian Court which related to properties situated in Burma.

9. In *Manujendra v. Purnendu*, ⁹ it was held that a new law bringing about a change in forum does not affect pending actions, unless a provision is made in it for change over of proceedings or there is some other clear indication that pending actions are affected (vide *Mohd. Idris v. Sat Narain* ¹⁰ The learned author then discussed the point that if the new law which is enacted during the pendency of a suit in a Civil Court is worded in the form that "no Civil Court shall have jurisdiction to settle, decide or deal with" certain questions which are committed to the jurisdiction of Revenue Courts and the pending suit relates to these questions, the jurisdiction of the Civil Court would be ousted (vide *Inacio Martines v. Narayan Hari Naik*, ¹¹

10. The principle, that pending proceedings are not affected, does not go beyond this part in every case language of the statute has to be examined to determine whether the Legislature clearly intended to bring within reach of the statute even pending

proceedings, vide *Shyabuddinsab v. Municipality of Gadag Batgeri*,).¹² It is, therefore, not essential that the Legislature, if it intends to apply a statute to pending proceedings, must enact an express provision to that effect, vide *King v. Southampton Income-tax Commissioner Ex. parte, W.M. Singer*,¹³

11. Thus, it will have to be decided in the facts of this case looking to the language of the provision as to whether the provision is retrospective or prospective and whether the legislative intent was to bar trial of even pending suits.

12. The language of Section 85 of the Act uses the words 'no suit or other legal proceedings shall lie' which will therefore, depend on the meaning of the words 'shall lie'. The word 'lie' has been defined in Osborn's Concise Law Dictionary, Seventh Edition by Roger Bird to mean 'an action "lies" if, on the facts of the case, it is competent in law, and can properly be instituted or maintained'. In Mozley and Whiteley' Law Dictionary published by Butterworth's, Tenth Edition by E.R. Hardy Ivamy, the word 'lie' has been defined as 'an action is said to lie, if it is legally maintainable'. In Black's Law Dictionary, Fifth Edition the word 'lie' has been defined to mean to subsist; to exist; to be sustainable, to be proper or available . Thus, the phrase "an action will not lie" means that an action cannot be sustained, or that there is no ground upon which to found the action."

13. Thus, the meaning of the words ' no action shall lie' would also be that no action shall be maintainable or shall be sustainable. The word 'maintain' has been defined in Black's Law Dictionary (supra) as follows:

"To 'maintain' an action is to uphold, continue on foot, and keep from collapse a suit already begun, or to prosecute a suit with effect. To maintain an action or suit may mean to commence or institute it; the term imports the existence of a cause of action maintain however, is applied to actions already brought but not yet reduced to judgment. In this connection it means to continue or preserve in or with; to carry on."

14. The word 'sustain' has also been defined in the Black's Law Dictionary (supra) as follows :

"To carry on; to maintain. To affirm or approve, as when an appellate Court

sustains the decision of a lower Court. To grant, as when a Judge sustains an objection to testimony or evidence, he or she agrees with the objection and gives it effect. To Support, to warrant, said of evidence in connection with a verdict, decision etc. To suffer, bear, undergo, To endure or undergo without failing or yielding; to bear up under."

15. In the light of the above excerpts from dictionaries, the words 'no suit or other legal proceedings shall lie' would mean that no suit or other legal proceedings shall be maintainable or sustainable which means no suit or other legal proceedings shall be carried on or continued to be entertained. If this is the plain meaning of the words, the bar would apply to pending proceedings also. It cannot, therefore,, be said that the trial Court committed any error in holding that the continuance of the suit was barred by Section 85 of the Act. Revision Petition No. 1376/97 therefore, deserves to be dismissed and is hereby dismissed.

16. So far as other Revision Petition No. 1409/97 is concerned, the impugned order has obviously been passed after the Act came into force. As already held, on coming into force of the Act , the bar under Section 85 of the Act applied to the continuance of the suit also and thus, the Court had no jurisdiction to pass any order in the suit except that of return of it for presumption to proper Court. The impugned order is therefore, *ex facie* without jurisdiction and has to be set aside without going into the merits of the order. It is, therefore, set aside. The question decided by the impugned order shall obviously remain open for being raised in any other proceedings which are taken in accordance with law.

Order accordingly.

Cases Referred.

1. AIR 1941 FC 16
2. AIR 1995 SC 1012
3. AIR 1957 SC 540
4. (1909) 1 KB 310
5. (1929) 38 TLR 128 (CA)
6. AIR 1951 SC 199
7. AIR 1964 SC 1873

8. AIR 1943 FC 24
9. AIR 1967 SC 1419
10. , AIR 1966 SC 1499
11. AIR 1993 SC 1756
12. AIR 1955 SC 314
13. (1916) 2 KB 249