

Chandro Devi and ors. Vs. Manav Bharti India International School

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Court : Delhi

Decided On : Nov-25-2013

Judge : Manmohan Singh

Appellant : Chandro Devi and ors.

Respondent : Manav Bharti India International School

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Order delivered on: November 25, 2013 + CM(M) 371/2013 & C.M. No.5616/2013 CHANDRO DEVI & ORS Through Petitioners Mr.Yashvir Sethi, Adv. with Ms.Manisha Agrawal & Mr.Ranjan Tyagi, Adv. versus MANAV BHARTI INDIA INTERNATIONAL SCHOOL Respondent Through Mr.R.K.Vats, Adv. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

(ORAL) 1. By way of the present petition under Article 227 of the Constitution of India, the petitioner has assailed order dated 21st December, 2012 passed by the Learned Civil Judge, whereby the application of the respondent under Order XXII Rule 9 read with Section 151 CPC was allowed and the suit abated in 2001 upon the death of the sole defendant was restored.

2. The petitioners being legal representatives of Late Laxmi Chand, instituted a suit for permanent injunction against the respondent restraining them from dispossessing him from the suit property as Suit A which was pending when Laxmi

Chand died on 28th November,2000.

3. During the pendency of Suit A, the respondent filed suit for possession in 1996 against Laxmi Chand as Suit B.

4. Vide order dated 7th October, 2002 passed by the Learned Civil Judge, the application filed by the respondent under Order 22 Rule 5 CPC for determination of legal representative of the deceased was dismissed.

5. Vide order dated 29th October, 2003 passed by the Learned Civil Judge, the application filed by the respondent under Order XXII Rule 4 CPC read with Section 151 CPC for substitution of the legal heirs of the deceased on record along with application under Section 5 of the Limitation Act for the condonation of delay in bringing the legal representatives of the deceased was dismissed on the ground that the application was not maintainable being barred by the law of limitation and the suit was accordingly abated.

6. The respondent preferred an appeal against the order dated 29th October, 2003 which was not maintainable. Thereafter, an application was filed under Order XXII Rule 9 (2) CPC read with Section 151 CPC for setting aside of the abatement along with an application under Order XXII Rule 4 (1) CPC.

7. Hence, the present petition was filed on the ground that the learned Trial Judge erred in granting benefit of provision of Section 14 of the Limitation Act and also erred in assuming that the learned appellate court directed for exclusion of the time from the date of death of Laxmi Chand till the decisions of appeal from consideration.

8. In order to decide the present petition, it is necessary to refer to few facts which are relevant between the parties : a) The respondent school is a recognized and unaided school and is governed by the provisions of the Delhi School Education Act and the Rules, 1973. The respondent school is a higher secondary school and affiliated to Central Board of Secondary Education (CBSE). The respondent school is run and managed by the Manava Bharati Institute of Child Education and Child Psychology, Delhi a society registered under the Society Registration Act, 1860. b)

The school is being run on the land which is a grant under the Government Grants Act, 1895 vide perpetual lease deed dated 2 nd May, 1974 executed through Delhi Development Authority. The land is the institutional land which was earmarked for a Higher Secondary School in the Panchsheel Park, New Delhi-110017. The suit property is the part and parcel of the said land. c) Shri Laxmi Chand (deceased)/defendant in the suit in question was employed as a gardener (Mali) in the respondent school and was residing as permissive user of the suit property being an employee of the respondent school. On being asked to make alternative arrangement of residence outside the school campus and to vacate and handover the suit property in August, 1994, the suit bearing No.418/94 for permanent injunction was filed by Shri Laxmi Chand as one of the plaintiffs, stating in the plaint that they have right to remain in possession of the suit property till they are evicted by adopting due process of law. In the said suit ad-interim injunction was granted and since then Sh. Laxmi Chand (now deceased) is in use and occupation of the suit property. d) The respondent school filed the suit for recovery of possession bearing Suit No.633/96 titled Manava Bharati India International School Vs. Sh. Laxmi Chand and vide order dated 18th December, 1996, both the suits were directed to be tried (consolidated) by one court. e) The suit No.418/94 for permanent injunction vide order dated 9 th May, 2003 was disposed of in view of the statement made by respondent school/defendant to the effect that the plaintiff shall not be dispossessed without the due process of law. f) In the written statement to the suit No.633/96 filed by the respondent school, defendant has belatedly claimed ownership in respect of the suit property on the ground of adverse possession. The plea of adverse possession needs to be adjudicated as per law and petitioners may not be allowed to succeed on technical ground de hors adjudication of the lis. g) For last almost 19 years, respondent is suffering injunction over the suit property which was in use and occupation of Sh. Laxmi Chand (deceased) as an employee of the respondent school. The suit property is situating in Panchsheel Park, New Delhi-1100 17 (South Delhi) where land value has appreciated many fold over the years. Loss of such a property earmarked for educational purpose would not be in the interest of the public nor respondent school.

9. In the present case, the learned Trial Court has found sufficient cause for condonation of delay in moving the applications and such findings having been reasonably arrived at and based on material available may not be reversed by this Court in the present petition. In this regard, the following rulings of the Supreme Court are being relied upon : a) Mithailal Dalsangar Singh and Ors. vs. Annabai Devram Nini and Ors., (2003) 10 SCC991

9. The courts have to adopt a justice oriented approach dictated by the upper most consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court. The opinion of the trial Judge allowing a prayer for setting aside abatement and his finding on the question of availability of sufficient cause within the meaning of Sub-rule (1) of Rule (9) of Order 22 and of Section 5 of the Indian Limitation Act 1963, deserves to be given weight, and once arrived at would not normally be interfered with by superior jurisdiction.

b) Similar views were expressed by Supreme Court in the case (1998) 7 SCC123 Balakrishnan vs. M. Krishnamurthy which was subsequently referred to in the cases (2002) 3 SCC195 Ram Nath Sao @ Ram Nath Sahu and Ors. Vs. Gobardhan Sao and Ors. and (2008) 8 SCC321 Perumon Bhagvathy Devasowom, Perinadu Village v. Bargaviamma (dead) by LRs and Ors.

10. The learned Trial Court while passing the impugned order has placed its reliance inter alia on the rulings of the Apex Court cited as (2002) 3 SCC195 Ram Nath Sao @ Ram Nath Sahu and Ors. Vs. Gobardhan Sao and Ors. which in para 12 reads as under :

12.. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the list terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.

11. The learned Trial Court while applying the aforesaid rulings and considering the nature of the disputes in the suit and the stakes of the respondent school/plaintiff involved therein, has returned the findings in para No.8 of the impugned order to the effect that :

8. No injustice or prejudice will be caused to the respondents if the application is allowed and the matter is decided on merits. On the other hand great injustice might be caused to the plaintiff if the instant applications are disallowed. The inconvenience, if any, caused to the respondents can be adequately compensated in terms of money.

12. Sh. Laxmi Chand (deceased) expired on 28th November, 2000. The Trial Court has held that the knowledge of LRs to the respondent school cannot be attributed prior to 22nd January, 2001. It has been further held that an application under Order 22 Rule 4 CPC for impleadment of LRs along with an application under Section 5 of Limitation Act seeking condonation of delay was filed on behalf of the plaintiff/applicant after a delay of almost 1 year 10 months on 22nd January, 2002. However, it is submitted by holding the said suit as abated, the said application came to be dismissed vide order dated 29th October, 2003 on technical ground that the suit having been already abated and there was no prayer for setting aside the abatement. In the appeal against the order dated 29th October, 2003, the Appellate Court vide order dated 23rd March, 2009 held that the order dated 29th October, 2003 was not appealable as not being against the order setting aside the abatement of the suit. However, the appeal being within limitation was allowed to be withdrawn with liberty to move an appropriate application before the trial court. The Appellate Court further observed that benefits of the Section 14 of the Limitation Act be given by the Trial Court in the filing of the application for setting aside of the abatement. In the circumstance as aforesaid, the period between 22nd November, 2002 to 23rd March, 2009 i.e. time taken in application including appeal was excluded by the learned Trial Court in computing the period of limitation for setting aside the abatement and period of limitation for setting aside the abatement and period of delay prior thereto was condoned. It is submitted, the respondent/plaintiff was entitled to the exclusion of the time that elapsed in prosecuting the proceeding that commenced with the filing

of the application for bringing LRs on record and condonation application on 22 nd November, 2002 had culminated with the withdrawal of the appeal with liberty on 23rd March, 2009. The benefits available under Section 14 of the Limitation Act as observed by the learned Appellate Court and subsequently said benefits given by the learned trial court is within the ambit of the Section 14 of the Limitation Act, 1963. Furthermore, the order dated 23 rd March, 2009 was neither challenged by the petitioners nor was opposed before the courts below, the same cannot be assailed in the present petition due to limited jurisdiction.

13. I feel that since the legal points are involved and for all the more reasons, the decision on merit is necessary after the trial in view of the nature of the present case. In case, decision on merit is not allowed, enormous loss and irreparable injury would be caused not only to the respondent/plaintiff but also to the public as the suit property is part of the land in respect of which the government grant was made to run a Higher Secondary School in the Panchsheel Park, New Delhi-1100 17.

14. Considering the overall facts and circumstances of the present case, no interference in the impugned order is called for.

15. The petition is accordingly dismissed. Pending application is also stand dismissed.

16. No costs. (MANMOHAN SINGH) JUDGE NOVEMBER25 2013

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