

Harendra Chandra Nath and ors. Vs. Bijoy Krishna Nath and ors.

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Court : Guwahati

Decided On : Jul-10-1992

Judge : D.N. Baruah, J.

Acts : [Limitation Act, 1963](#) - Schedule - Article 58; [Specific Relief Act, 1963](#) - Sections 34

Appeal No. : S.A. No. 157 of 1986

Appellant : Harendra Chandra Nath and ors.

Respondent : Bijoy Krishna Nath and ors.

Advocate for Def. : M. Singh and P.K. Tewari, Advs.

Advocate for Pet/Ap. : C.R. De, A.K. Purkayastha and A. Dhar, Advs.

Disposition : Appeal allowed

Judgement :

D.N. Baruah, J.

1. This second appeal is directed against the judgment and decree dated 3-4-86 passed by the District Judge, Cachar, Silchar dismissing the appeal and confirming the judgment and decree dated 17-12-83 passed by the Assistant District Judge, No. 2, Silchar, Cachar, in Title Suit No. 77 of 1980.

2. At the time of admission of appeal only one substantial question of law was formulated i.e. 'whether the suit is barred by limitation?'

3. At the time of hearing also the learned counsel for the appellants has urged only this question of law. The fact of the case, is that --Upendra Chandra Nath (since deceased) instituted a suit (T.S. No. 77/80) in the Court of the Assistant District Judge No. 2, Cachar, Silchar against Bijoy Krishna Nath, Anil Kr. Nath and two others. The third and fourth defendants were pro forma defendants. During the pendency of the suit Upendra Ch. Nath died leaving behind the appellants as his legal heirs. Accordingly their names were substituted. The plaintiff-Upendra Ch. Nath along with his brother Satyendra Chandra Nath jointly owned and possessed land measuring 22 bighas 15 kathas 2 chataks covered by S. R. Patta No. 95. Satyendra Nath died leaving his widow as his sole heir. After 3/4 years of the death of Satyendra Nath his widow Hemoprova Devi, remarried. According to Hindu Widows' Re-marriage Act, 1856 her share of property reverted back to the plaintiff. Late -- Upendra Ch. Nath. He was possessing the land since the death of Satyendra Nath and the widow never possessed even after the death of Satyendra Nath. However, her name was recorded in the record of rights. Therefore, the Late Upendra Ch. Nath after death of Hemaprova Devi approached her sons through her second marriage, to strike out the name of their mother from the records of right as they had no right, or claim over the suit land. Request for striking out the name was made in the month of May, 1980 to the defendants. However, they did not comply with the request. Hence, the suit was filed for declaration of plaintiff's right, title and interest over the suit property and for confirmation of his possession over the suit land. During the pendency of the suit the plaintiff Upendra Ch. Nath expired and the names of the present appellants were brought into the record.

3A. The defendants entered appearance and contested the suit by filing written statement. After examination of witnesses, the Assistant District Judge by judgment dated 17-2-1983 dismissed the suit with costs. While dismissing the suit, the trial Court held that

the suit was barred by limitation.

4. The appellants preferred an appeal before the District Judge, Cachar, Silchar (T.A. No. 4/83). The District Judge also by his judgment dated 3-4-1986 dismissed the appeal affirming the judgment and decree passed by the trial Court.

5. I have heard both sides. Mr. C. R. De, learned counsel for the appellants has submitted that the District Judge without discussing the evidence on record and without giving proper reasons most illegally held that the suit was barred by limitation. While dismissing the suit on the ground of limitation, the District Judge completely misconstrued the provisions of law and thereby the impugned judgment of the Courts below are not sustainable in law and liable to be set aside. Mr. M. Singh, the learned counsel for the respondent however, has supported the impugned judgment.

6. I have gone through the judgments of the Courts below. While allowing the appeal and dismissing the suit, the District Judge observed that the name of Hemoprova Devi was recorded in the record of rights during the period of re-settlement 1949 to 1954. The filing of suit was therefore apparently barred by limitation. According to the District Judge, the suit ought to have been filed within the period of three years from the date of entry in the record of rights.

7. Article 58 of the Indian Limitation Act prescribes time for filing a suit for declaration. Article 58 is quoted below :

'To obtain any other declaration (three years) when the right to sue first accrues'.

The only question to be seen here is that when the right to sue first accrues. According to the District Judge, from the date of entry in the record of rights, the right to sue accrued. The learned District Judge, however, did not discuss any evidence as to when the plaintiffs came to know about the entry to the name of the mother of the respondents in the record of rights. Time, for filing a suit for declaration, under Article 58 of the Limitation Act will run from the date when the right of sue first

accrues. Section 34 of the Specific Relief Act provides in general terms that any person entitled to any legal character, or to any right to property, may institute a

suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion, make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief. A suit can be instituted not only against the person denying, but even against one merely interested to deny. The cause of action arises only when the denial occurs, or when the plaintiff apprehends that the defendant may actually deny. In that case, the cause of action arises only when the denial occurs, by a formal act, or an oral denial made to a third person or a denial made in writing. If, however, such denial is not communicated to the plaintiff, when cause of action will arise in that case? Normally, the right to sue accrues when the right in respect of which the declaration is sought is denied or challenged and the person who seeks the declaration has knowledge about.

8. In *Mt. Bolo v. Mt. Koklan*, AIR 1930 PC 270, the Privy Council held thus (at page

272) :--

'...There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement or at least clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. No doubt *Mt. Koklan's* right to the property arose on the death of *Tara Chand*, but in the circumstances of this case their Lordships are of opinion that there was no infringement of, or any clear and unequivocal threat to her right till the year 1922, when the suit, as stated above, was instituted.'

9. In *Muruga Chetty v. Rajaswamy*, AIR 1916 Mad 130, the Madras High Court held that the cause of action for declaratory suit, based on denial of title, does not arise until the plaintiff has knowledge of the denial.

10. In *Ghulam Hussain v. Saifullah Kha*, AIR 1917 Lah 293, also similar view was taken.

11. In *Kamat Reddy Narayan Reddy v.*

Kamat Reddy Narayan Reddy, AIR 1958 AP 654, the Andhra Pradesh High Court following the decision of the Privy Council in *Mt. Bolo* (supra) held that there can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement or at least clear and unequivocal threat to infringe that right by the defendant against when the suit is instituted.

12. In AIR 1942 Oudh 346, it was held that the right to sue would not occur even if the name of the defendant is entered in the rights of record. The Court observed that so long as an adverse entry in the revenue records does not injure the plaintiff he need not come to Court at all and hence a plaintiff in a suit for declaration that he is an under proprietor is not out of time if he institutes the suit within the prescribed period of the injury.

13. In another case, 205 Indian Cases 520, the same Court held that 'where a suit was filed for a declaration by the deceased's brother against the widow that the property was the joint family property and that mutation in the widow's name was made only for consolation and that her assertion of right by filing a suit for profits against the plaintiff would not affect him, the plaintiff was not bound to institute a suit for declaration on the basis of mutation entry, for he was not disturbed at all by it as it did not throw any cloud on his title and that it was not until the defendant actually asserted a title by means of filing the suit for profits that it became obligatory upon him to file the suit and hence limitation for the suit started only from the latter date and not from the date of mutation entry'.

14. Again in *Ibrahim v. Sharifan*, AIR

1980 P&H; 25, the High Court of Punjab and

Haryana held that mere entry of name of the

defendant in the record of rights would not

furnish any cause of action. The time will

begin, to run from the date when there is some

threat from the defendant or denial of the

title.

15. In Nath Singh v. Heet Singh, AIR

1980 All 358, boundary was wrongly fixed as far back in 1935-36. However, there was not interference by other village people. The subsequent interference giving rise to suit for declaration the period of limitation should be calculated from the day of interference and not from the date of wrong fixation.

16. In the instant case, there was no interference either from the respondents or from their mother. Eventhough, her name remained in the record of rights she never I claimed any right to the property. After the death of the mother, the respondent also did not exert any right. However, the plaintiff Upendra Ch. Nath sought correction in the records of right as it might cloud his title inasmuch as, after the remarriage of the respondents' mother, they had not right, title and interest over the property. But the respondents did not take any steps and from this point of time, it appeared that the respondents were at least interested to deny the title to the property of the plaintiff Lt. Upendra Ch. Nath, and this threat gave cause of action to the deceased plaintiff. Accordingly, the suit was filed.

17. In view of the decisions quoted above and under the facts and circumstances of the case, I hold that the Courts below erred in law by holding that the suit was barred by limitation. In my opinion, the suit filed by the plaintiff was very much within time and the suit cannot be dismissed on the ground. That being the position, I allow the appeal and set aside the impugned judgment and decree and remand the case to the District Judge. Cachar, Silchar with a direction to dispose of the appeal on merit after giving full opportunity to the parties.

18. Send down the case records immediately. The District Judge shall make endeavour to dispose of the appeal as expeditiously as possible and at any rate within a period of two months from the receipt of the order.

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