

Adinaranappa Vs. Mallamma

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Court : Karnataka

Decided On : Oct-18-1949

Reported in : AIR1950Kant13; AIR1950Mys13

Judge : Balakrishnaiya and ;Mallappa, JJ.

Acts : Limitation Act, 1908 - Sections 3, 4, 9, 10, 11, 12, 12(1), 13, 14, 15, 16, 17, 18, 19, 20, 22, 29 and 29(2) - Schedule - Article 67; Mysore Agriculturists' Relief Act, 1928 - Sections 3 and 24; Limitation Act, 1877 - Sections 6; Limitation (Amendment) Act, 1922

Appeal No. : Second Appeal No. 610 of 1948-49

Appellant : Adinaranappa

Respondent : Mallamma

Advocate for Pet/Ap. : D. Krishna Iyengar, Adv.

Judgement :

Mallappa, J.

1. This is an appeal against the judgment and decree in R.A. No. 105 of 47-48 on the file of the Additional Subordinate Judge, Bangalore, confirming those of the II Munsiff, Bangalore, in O.S. No. 131 of 1946-47 on the file of this Court.

2. The plaintiff-respondent filed the suit against the defendant-appellant for recovery of the Rs. 513 due on a promissory note executed by the defendant on 3rd September 1997 in favour of the deceased husband of the plaintiff. The plaintiff relied on an endorsement on the promissory note dated 7th September 1940 for the payment made towards interest. The defendant is admittedly an agriculturist. The defendant is admittedly an agriculturist within the meaning of the Mysore Agriculturists' Relief Act and he has pleaded discharge. This has not been believed by both the Courts and the suit is decreed as prayed for.

3. The only point that was argued in this appeal is that the courts below erred in the view that the suit is not barred by limitation by reason of the endorsement dated 7-9-1940 in as much as Sections 19 and 20, Limitation Act do not apply to the periods of limitation prescribed for agriculturists entitled to relief under the Mysore Agriculturists' Reliefs Act. It is conceded that the law as laid down in 22 Mysore Law Journal 27 is against this contention of the appellant. It is argued, however, that as the decision in *Kishore Lal Stores v. Jagannath*, A.I.R. (31) 1944 Bom. 89 : (L.L.R. (1944) Bom. 71) on which the decision in 22 Mys. L.J. 27 is based, has been overruled by a later Full Bench decision in *Janardhan Eknath v. Ganesh Sadashiv*, A.I.R. (32) 1945 Bom. 200: (I.L.R. (1945) Bom. 167 F.B.) the point raised needs some consideration and it was urged that in case we are satisfied that the decision in 22 Mys. L.J. 27 is not correct, the point might be referred to a Full Bench.

4. In this case the suit is based on a pronote dated 3rd September 1937. The suit was filed only on 6th September 1946 more than three years after 7th September 1940, the date of the endorsement of payment of interest, but within six years from the date. If the defendant was not an agriculturist within the meaning of the Mysore Agriculturists' Relief Act, it is clear that the suit would have been barred by the provisions of the Mysore Limitation Act. But the period of limitation substituted in Section 24, Mysore Agriculturists' Relief Act for three years prescribed in the Limitation Act to cases of the kind under consideration is six years, in case it could be held that the plaintiff is entitled to the benefit of Section 20, Limitation Act. The main point for consideration is whether Section 20, Limitation Act is applicable to suits filed against agriculturists entitled to relief under the Agriculturists' Relief Act,

is within time.

5. Section 29 (2), Limitation Act is as follows:

'Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule and for the purpose of determining any period of limitation prescribe for any suit, appeal or application by any special or local law:

(a) the provisions contained in Section 4, Sections 9 to 18 and Section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply.

It is not disputed that the Mysore Agriculturists' Relief Act is a special law. It cannot also be disputed that if this Act prescribed for any suit a period of limitation different from the period prescribed by Schedule I, Section 20, Limitation Act would be inapplicable, unless the special law makes it applicable.

6. Under Section 24, Mysore Agriculturists' Relief Act, the period of limitation of twelve years and six years as mentioned in Clauses (a) and (b) of that section 'shall be deemed to be substituted for the period of limitation prescribed by the Limitation Act'. Can it be said that this section of the Agriculturists' Relief Act prescribes for any suit any period of limitation different from the one prescribed under the Limitation Act? The matter came up for consideration in *Keshav Krishna v. Bhagwan Sambhu*, A.I.R. (29) Bom. 131: (200 I.C. 12) and *Divatia J.* held with reference to the provisions of the Decan Agriculturists' Relief Act, containing the same wording as the section under consideration, that Section 20, Limitation Act cannot be applied to cases of this kind, as the Agriculturists' Relief Act, which is a special enactment itself prescribed a period of limitation different from that prescribed in the Limitation Act. But in a subsequent decision in *Kishore Lal Stores v. Jagannath*, 45 Bom. L.R. 1064 : A.I.R. (31) 1944 Bom. 89, *Wadia and Sen JJ.*, held that:

'Decan Agriculturists' Relief Act merely substituted in the schedule to the Limitation Act a special period of limitation and does not lay down as independent self-contained provision as regards limitation applicable to such suits.'

Of the two conflicting views, the view taken in *Kishore Lal Stores v. Jagannath*, A.I.R. (31) 1944 Bom. 89 : (I.L.R. 1944 Bom. 71) was preferred by Venkataramana Rao C.J. and Venkata Ranga Iyengar J. in the case reported in 22 Mys. L.J. 27. What is now to be considered is whether there is any point raised in the Full Bench decision reported in *Janardan v. Ganesh*, A.I.R. (32) 1945 Bom. 200 (I.L.R. (1945) Bom. 167 F.B.) which has overruled *Kishore Lal Stores v. Jagannath*, A.I.R. (31) 1944 Bom. 89: (I.L.R. (1944) Bom. 71) that justifies a change in view taken by this Court in 22 Mys. L.J. 27 following *Kishore Lal Stores v. jagannath*, A.I.R. (31) 1944 Bom. 89: (I.L.R. (1944) Bom. 71). The decisions in *Kishore Lal Stores v. Jagannath*, A.I.r. (31) 1944 Bom. 89: (I.L.R. (1944) Bom. 71) and 22 Mys., L.J. 27 give two reasons for holding that all the provisions of the Limitation Act including Section 20 are applicable to suits to which the provisions of Agriculturists' Relief Act are applicable except to the extent modified by that Act. The first reason is that the Agriculturists' Relief Act does not contain a complete body of provisions regarding limitation. The second reason is that Agriculturists's Relief Act does not prescribe any period of limitation different from those prescribed in the Limitation Act though it modifies the Limitation Act to some extent.

7. According to Section 29(2), Limitation Act, as it now stands, sections other than 4, 9 to 18 and 22 shall not supply:

'If any special or local law prescribe for any suit, appeal or application a period of limitation different from the period prescribed therefor by Schedule I.'

of the Limitation Act. It need hardly be added that if the special law states that all the sections of the Limitation Act are applicable, they become applicable. The judgment of Lokur J., who mae the reference to the Full Bench shows that the distinction mae between local or special Acts containing a complete body of provisions with regards to limitation and those not containing them, no longer arises for consideration after the amendment of Section 29, Limitation Act. There is much force in this line of argument as the amendment was made to avoid the

conflict of opinion that existed on the point before amendment and the amended section is so worded as to make it clear what sections Limitation Act are applicable to special or local Acts and when they are and when they are not applicable.

8. The opinion expressed in *Kishore Lal Stores v. Jagannath*, A.I.R. (31) 1944 Bom. 89: (I.L.R. (1944) Bom. 71) on the distinction referred to above for holding that the general provisions of the Limitation Act like Sections 19 and 20 are applicable to Agriculturists' Relief Act which does not contain a complete body of provisions with regard to limitation for suits, is based on the decision in *Srinivasa Aiyangar v. Secy. of State*, 38 Mad. 92 : (A.I.R. (3) 1916 Mad. 1093), and it has been observed that:

Section 72, Dekkhan Agriculturists' Relief Act merely substitutes in the Schedule to the Limitation Act a special period of limitation as regards suits falling under Section 3(w), Agriculturists' Relief Act, and does not lay down an independent and self-contained provision as regards the limitation Act, and to reckon limitation from the date on which date a certain payment towards the Khata balance has been made.'

Following *Kishore Lal Stores v. Jagannath*, A.I.R. (31) 1944 Bom. 89: (I.L.R. (1944) Bom. 71), 22 Mys. L.J. 27 at page 29 states:

It is evident on a perusal of the various sections of the Mysore Agriculturists' Relief Act that it does not provide a separate or self-contained body of provisions with regard to the limitation of suits and therefore it cannot be said that there is any means by which we can determine the period of limitation within the meaning of S. 29, Limitation Act.'

9. The above distinction made between special or local laws which are complete codes as regards limitation and those which are not complete codes as regards limitation in considering the applicability of general provisions of Limitation acts per Section 29 (2) of that Act, is based on decision like *Srinivasa v. Secy. of State*, 38 Mad. 92: (A.I.R. (3) 1916 Mad. 1093) relied on in *Kishore Lal Stores v. Jagannath*, A.I.R. (31) 1944 Bom. 89 : (I.L.R. (1944) Bom. 71), followed in 22 Mys.L.J. 27. Such a distinction does not arise, it has to be stated with respect after the

amendment of Section 29(2), Limitation Act, Section 29(2) originally stood as follows:

'Nothing in this Act shall affect or alter any period of limitation specially prescribed for any suit, appeal or application by any special or local law now or hereafter in force in British India.'

Section 6, Limitation Act, 1877, was substantially re-enacted in this form in Section 29, Sub-section 1, Clause (b) of the Act of 1908 which has been now replaced by Section 29(2), Limitation Act in what used to be termed as British India. There is a similar amendment in the section of our Act. As observed in statement of objects and reasons for the amendment in Gazette of India Extraordinary dated 21st February 1921:

'This provision (Section 29) has been the subject of conflicting decisions by High Courts. The Calcutta Maharaja of Jeypore v. Vikarama Deo Garu, 24 C.W.N. 1 : (A.I.R. (60) 1919 P.C. 84) and Madras Sivarammayya v. S. Bujanga Rao, 39 Mad. 593: (A.I.R. (3) 1916 Mad. 376) High Courts have in effect held that the general provisions of the Act cannot be applied in computing the period of limitation specially provided by any special or local law, whereas the Allahabad High court has taken the contrary view on the ground that the special or local law is not in itself a complete code of limitation. The object of the Bill is to make it clear that the provision in certain sections of the Act apply to the period of limitation prescribed by any special or local law unless they are specifically excluded.'

The commentary in Chitaley & Annaji Rao's Indian Limitation Act, Vol. I pages 913 to 916 makes it clear also that the amendment is made to avoid this distinction and Srinivasa v. Secy. of State, 38 Mad. 92: (A.I.R. (3) 1916 Mad. 1093) is referred to in the notes at p. 915 as one of the decision which held that the 'Test is whether Acts is a complete code.' The commentary makes it also clear that

'The amendment of the Section into its present form by the Limitation (Amendment) Act of 1992 has now set the conflict at rest. The words 'affect or alter' have been deleted, and the extent and applicability of the several general provisions of the Act, to the periods prescribed by the special or local laws,

specially laid down.'

10. The result is that the distinction made between special and local laws which are complete codes as regards limitation and those which are not, in *Srinivasa v. Secy. of State*, 38 Mad. 92: (A.I.R. (3) 1916 Mad. 1093) and other decisions on which the decision in *Kishore Lal Stores v. Jagannath*, A.I.R. (31) 1944 Bom. 89: (I.L.R. (1944) Bom. 71) followed in 22 Mys. L.J. 92 does not arise after the amendment of Section 29, Limitation Act as the amendment has the effect of overruling the decisions like *Srinivasa v. Secy. of States*, 38 Mad. 92: (A.I.R. (3) 1916 mad. 1093) which are based on such a distinction. Section 29(2), Limitation Act as it now stands is applicable only if the special or local Act prescribes a period of limitation different from that prescribed in the Limitation Act. In such cases it states that certain sections of the Limitation act are applicable unless excluded and that other section are not applicable (unless included). This is so whether the special or local laws provide or do not provide a separate or self-contained body of provisions with regard to limitation of suits, appeals or applications. If the *Agriculturists' Relief Act* 'prescribed for any suit appeal or application a period of limitation different from that prescribed therefor' by the Limitation Act the mere fact that it does not provide a separate or self-contained body of provisions with regard to the limitation of suits does not entitle the plaintiff in such a suit to the benefit of Section 20. Section 29 as it stands after amendment makes it clear that in such a case only Sections 4, 9 to 18 and 22 are applicable unless excluded by such an enactment and that other provisions like Section 20 shall not apply. It has to be stated with respect that after the amendment of Section 29, Limitation Act, it is incorrect to apply the test whether the special or local law contains an independent and self-contained provisions as regard limitation or whether it does not, for the purpose of finding out whether general provision of Limitation Act like Section 20 of that Act are applicable to suits governed by the special or local Act.

11. The question whether the provisions of the Limitation Act other than those contained in Section 4, 9 to 18 and 22 can be applied to suits governed by provision of any special or local law such as the *Agriculturists' Relief Act* depends mainly on the determination of the point whether the special or local law prescribes

a period of limitation different from that provided in Schedule I, Limitation Act and it is, therefore, necessary to see whether the Agriculturists' Relief Act prescribes any period of limitation. The main basis on which the opinion of Kania C.J. in the Full Bench decision in Janardhan v. Ganesh, A.I.R. (32) 1945 Bom. 200; (I.L.R. (1945) Bom. 167 F.B.) rests is found in the following observations:

'In order to appreciate the true effect of Section 29(2), Limitation Act, it is necessary to first turn to Schedule I, Limitation Act. It is divided into three columns; the first is headed 'description of suit', the second 'period of limitation' and the third 'time from which period begins to run'. The expression 'period of limitation' is thus used in that schedule to mean what is prescribed under Col. 2. Incidentally, in my opinion it negatives the contention that a period of limitation, must prescribe the starting point because, if that was correct there was no necessity for the Legislature to make Col. 3 time from which period begins to run'. It seems to me, therefore, that by the use of the words 'period of limitation' in Section 29(2), Limitation Act, the Legislature clearly meant a period stated in another special or local law which could be put in place of the period shown under Col. 2 Schedule I.'

If analysed, the decision is based upon the assumption that the mention of periods of limitation in the Agriculturists' Relief Act is equivalent to prescription of a period of limitation. The point for consideration is when it can be said that

'A special or local law prescribes for any suit appeal or application a period of limitation different from the period prescribed therefor by the first schedule of Limitation Act.'

How is a period of Limitation prescribed in any enactment?

12. Periods of limitation are prescribed for instance in the Schedule I, Limitation Act, and in fact it is clear that Section 29, Limitation Act, uses the word 'prescribed' in the sense it is used when it is said that a period of limitation is prescribed in Schedule I of that Act. Supposing the period of limitation alone or the periods of limitation and of the nature of suit, appeal or application alone were stated in appropriate columns in the Schedule I to Limitation Act and not also 'the time from which the period begins to run', can it be said that the period of limitation is

prescribed? The nature of the suit, application, or appeal and the period of limitation are no doubt stated in such a case but before it could be said that the Limitation Act prescribes the period of limitation, it has also to state 'the time from which the period begins to run'. It would not have been possible to apply to any case Section 3, Limitation Act referred to in Section 29(2) of Limitation Act if in prescribing the period of limitation the Act had not stated the time from which the period begins to run. Section 6, Limitation Act refers to 'the time prescribed therefor in column 3 of Schedule I.' According to Section 12(1).

'In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded'

Column (2) in Schedule I mentions the period of limitation but the Limitation Act prescribes the period of limitation by what is mentioned in all the three columns of Schedule I taken as a whole. An enactment cannot prescribe a period of limitation by merely stating the period of limitation and the nature of suits, appeals and application. The time from which limitation starts must also be mentioned before any prescription is laid down. It is true that the Agriculturists' Relief Act mention some period of limitation for some suits, different from those prescribed those periods. The periods mentioned by it are to be read in place of periods mentioned in the Limitation Act which it is that lays the prescription by stating all that is necessary to state for that purpose. As the Agriculturists' Relief Act has not prescribed any period of limitation for the suits, referred to in it in the above sense it could be said that periods of limitation have been prescribed in Schedule I of Limitation Act, it cannot be said that Section 29(2) of that Act is applicable. The result is that all the provisions of limitation act including those contained in Sections 29 and 20 are applicable to suits under the Agriculturists' Relief Act, except to the extent the act indicates the Limitation Act to be read a modified.

13. The only other point considered in the Full Bench decision is the construction of the meaning of the word 'substituted' found in the Section of the Agriculturists' Relief Act, modifying in the case of suits mentioned in it, the period of limitation as given in Schedule I, Limitation Act. It has to be observed with respect that proper significance of the word is noticed in 22 Mys. L.J. 27 and that the reasoning given

in it cannot be improved upon. As observed at p. 29:

'The words 'shall be deemed to be substituted are significance. The expression 'the periods of limitation, in the specific context means the number of years mentioned in Clauses (1) and (b) of the Section. By a statutory fiction though six years is not mentioned in Col 2 of the said Article 67 you must read that article as though six years re there. The said article so read will apply to the case. Thus, it is the Mysore Limitation Act that governs the case with the statutory fiction imposed thereon. Once the Limitation Act applies, Section 20 of the Act is attracted and the suit claim is not barred by limitation having been instituted within six years from the date of the last endorsement. This conclusion follows from the plain meaning of the language of Section 24, Mysore Agriculturists' Relief Act'.

We would like to add one other reason for being reluctant to change the view already taken by this Court. As observed by Reilly C.J. in 40 Mys. H.C.R. 435:

'When there is nothing in the view of the law adopted in such a case which is in itself unjust or opposed to the public interest, and the case was decided many years ago so that it is to improbable that many transactions have been made in the light of that decision, it would be improper to re-open such a question by a reference to a Full Bench and so possibly create confusion and unsettlement'.

Thus the principle of stare decisis stares us in the face. it cannot be said that there is any need to refer the matter for reconsideration by a Full Bench and we agree with respect with the view taken in 22 Mys. L.J. 27 that Section 20, Limitation Act is applicable to suits mentioned in Section 24, Mysore Agriculturists' Relief Act. The result is that the appeal stands dismissed.

Balakrishnaiya, J.

14. I agree.

15. Appeal dismissed.

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