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Court : Karnataka

Decided On : May-30-1960

Reported in : AIR1960Kant278; AIR1960Mys278

Judge : N. Sreenivasa Rau, J.

Acts : Limitation Act - Sections 10 - Schedule - Articles 59, 62, 96, 97, 120 and 1290

Appeal No. : Civil Revn. Petn. No. 942 of 1958

Appellant : Doddamane G. Shankarappa

Respondent : Marulusiddiah

Judgement :

ORDER

(1) The respondent filed a suit against the petitioner for the recovery of RS. 200/- and interest thereon at 1 per cent per annum alleging that it was the balance out of Rs. 400/- payable to him by the defendant who was entrusted with certain funds for distribution amount the creditors of one Neelappa who has been examined as P.W. 1 in the case. The defendant contended that the amount payable to the plaintiff was only Rs. 200/- which admittedly had been paid. He also denied that he had been entrusted with the task of distribution by virtue of a decision at a panchayat as alleged by the plaintiff. The Court below found the plaintiff's case to be true and decreed the suit as prayed for. I have read the evidence in the case

and it seems to me that the material on record finally warranted the conclusion arrived at by the learned Civil judge that the defendant came into possession of Rs. 3,250/- to be distributed amongst the creditors of Neelappa and that out of that amount a sum of Rs. 400/- was payable to the plaintiff.

(2) It appears, however, to have been contended for the defendant at the stage of arguments in the Court below, though no such plea was raised in the written statement, that the suit was barred by limitation, as it was brought more than three years from the date of the Panchayat when the amount was entrusted to the defendant or from the date of Ex. D-3 i.e. the document relating to the sale the proceeds of which were entrusted to the hands of the defendant for distribution amongst the creditors. The learned Judge rejected this contention in these words:

'In my opinion, the three-year rule does not apply to this case as the defendant is a trustee and it is the six-year rule under Article 120 of the first Schedule, Article 120 to the Limitation Act that applies and as the suit is brought within six years from the date of the panchayathi when the amount was entrusted to the defendant, the suit is in time.

The same contention is urged by the defendant (petitioner) before this Court. According to the learned advocate for the petitioner it is article 62 of Schedule I of the Limitation Act that is applicable to a suit like the present one and not Article 120. It is hardly necessary to say that the latter article, being a residuary article, should not be applied unless the court is clearly satisfied that the suit does not come under any of the other articles. The learned Advocate for the petitioner has suggested no other article than Article 62. Nor indeed does the case appear to come under any other article, leaving out of account Article 120. The question, therefore, is whether the present suit is, as described in Article 62, a suit for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.'

(3) The case put forward by the plaintiff was that P.W. 1 Neelappa had contracted various liabilities, that he had executed a sale in favour of one Gowdara Siddappa conveying his property consisting of lands and houses to secure the amount due to the said Siddappa, that a panchayath held, where most of the creditors were

present, it was decided that the property should be conveyed to Gurushantappa, son of Patel Gurubasappa who was also one of the creditors and that Patel Gurubasappa should pay Rs. 3,250/- to the hands of the defendant, who was also one of the creditors and who was regarded as the chief man in the panchayath for distribution amongst creditors and for meeting stamp and registration charges of the sale deed.

It may also be added, though the document took the form of a sale deed, the real intention was that it should be regarded as a mortgage. The sale deed by Siddappa in favour of Gurushanthappa is dated 18-12-1954. Therefore, the Panchayat must have been held earlier. There is also evidence showing that the whole sum of Rs. 3250/- was not paid in one instalment to the defendant. The debtor owed Rs. 400/- to Gurubasappa. Hence after appropriating that amount the sum which had actually to be advanced to Gurubasappa was 2,850/- out of which according to his evidence Rs. 2,600/- was paid at the time of the panchayat and Rs. 250/- later.

The actual date of payment of this amount has not been established. It is clear, however, that it must have been paid some time between the date of the panchayathi and the date of the sale deed, i.e. 31-12-1954 and at any rate some days before 11-1-1955, the date of the post card addressed by the defendant to the plaintiff. The post card is referred to in para 3 of the plaint as indicating the date of the cause of action. The suit was filed on 13-1-1958. It is thus clear that the suit was filed more than three years after the date when the money was received by the defendant and the suit must be held to be barred by limitation, if it is Article 62 that is applicable.

If, On the other hand, it is Article 120 that applies to the suit, the plaintiff had a period of six years from the time when the right to sue accrued. That, according to the plaintiff by his letter dated 11-1-1955. It will be noticed from the extract given above from the judgment of the Court below dealing with the question of limitation that in the learned Judge's view the circumstance that the defendant was a trustee was conclusive in determining the article of limitation applicable as article 120.

That article being a residuary one makes no reference to the nature of the claim. If there is any other article that is applicable to a claim, it follows that it is that article which would govern the case and not Article 120. In this context it may at once be mentioned that Section 10 of the Limitation Act needs no consideration since no express trust or, to use the language of Section 10, no trust for any specific purpose, is put forward or made out by the plaintiff. It is not his case that either the creditors or the debtor or the vendee constituted the defendant a trustee vesting in the defendant the property in the amount placed or to be placed in his hands by the vendee.

The circumstances alleged by the plaintiff and held to be proved by the Court below do show that a constructive trust came into existence in which a sum was placed in the hands of the defendant for distribution amongst the various creditors including the sum of Rs. 400/- to be paid to the plaintiff. Article 62 contemplates cases in which the defendant has received money which is meant for the plaintiff's use and has to be paid by the defendant to the plaintiff. In the case on hand it is seen that the defendant received money out of which a specific sum of Rs. 400 was the amount for the use of the plaintiff as it had to be given by the defendant to the plaintiff.

It would therefore appear that the case comes in terms under Article 62. There is nothing in Article 62 which says that the money should be payable by the defendant to the plaintiff in pursuance of an express agreement. In fact a large number of cases to which Article 62 has been held to be applicable are cases in which money had come into the hands of the defendant under the circumstances which precluded the possibility of an express agreement, for example, when a co-owner receive, rent from a tenant.

The liability of the person receiving the money in such circumstances arises by virtue of an implied agreement. In fact it has been held that for the application of the article it is not necessary that the defendant at the time of receiving the money should have done so with the intention that it is for the use of another person and that if it is shown that the other person had the right for the use of the amount when the amount was received, the matter comes under Article 62. While dealing

with this question in the case reported in *Mahomed Wahib v. Mohamed Ameer*, ILR 32 Cal 527, Harington J. refers to the principle underlying this species of action and gives the following quotation from Blackstone, saying that it lies.

'When one has had and received money belonging to another without any valuable consideration given on the receiver's part; for the law construes this to be money had and received for the use of the owner only; and implies that the person so receiving promised and undertook to account for it to the true proprietor. And if he unjustly detains it, an action on the case lies against him for the breach of such implied promise and undertaking; and he will be made to repair the owner in damages equivalent to what he had detained in violation of such his promise. This is a very extensive and beneficial remedy applicable to almost every case where the defendant has received money, which *exaequo et bono* he ought to refund. It lies for money paid by mistake or on a consideration, which happens to fail, or through imposition, extortion, or oppression or where any undue advantage is taken of the plaintiff's situation.'

and adds:

'These words very aptly describe the present case; the defendant has received monies belonging to the plaintiff which *exaequo et bona* he ought to refund: the plaintiff's cause of action therefore is for money had and received to the plaintiff's use, and the money is none the less received to the use of the plaintiff, because the defendant unjustly detains it for his own benefit.' Mookerjee, J. who was also a party to the decision referring to an earlier decision of that High Court says:

'It seems to me to be clear that the article, when it speaks of a suit for money received by the defendant for the plaintiff's use, points to the well-known English action in that form; consequently the article ought to apply wherever the defendant has received money which in justice and equity belongs to the plaintiff under circumstances which in law render the receipt of it, a receipt by the defendant to the use of the plaintiff. As pointed out by Lord Mansfield, C. J., in *Mosses v. Macfarlan* (1760) 2 Burr. 1005, this form of action lies for money paid by mistake, or upon a consideration, which happens to fail, or for money paid by mistake, or upon a consideration, which happens to fail, or for money got through imposition

(express or implied) or extortion or oppression or an undue advantage taken of the plaintiff's situation contrary to laws made for the protection of persons under those circumstances, in other words, this form of action would be maintainable in cases the defendant at the time of receipt, in fact or by presumption of fiction of law receives the money to the use of the plaintiffs:'

(4) It will be noticed that all the illustrations given put the defendant in a position of constructive trustee even without an agreement. His position can be no different in a case like the one on hand in which the defendant is found to have explicitly undertaken the responsibilities of making payment to the several creditors after receipt of the amount from the vendee.

(5) The learned Advocates for the respondent has referred to the decision reported in 8 Mys. LJ 25 in which it is observed that the proper article applicable to a case of constructive trust or of deposit without an agreement that it shall be payable on demand, is the residuary Article 120 there being no other article specifically provided for. A perusal of the decision shows that the contention put forward by the defendant was that the amount claimed was a loan and that therefore Article 59 of the Limitation Act applied to the claim. It was held that the transaction did not represent a loan and that the position of the defendant was that of a constructive trustee.

On the latter hypothesis it appears to have been admitted for the defendant that Article 1290 applied. The substantial question discussed was, it being taken for granted that Article 120 applied, when the right to sue accrued. Further it is seen from the facts of the case that the defendant had not received money from a third party for the use of the plaintiff. The defendant acting for and on behalf of the plaintiff obtained the moneys later on claimed by the plaintiff. Another decision cited at the Bar, *Annamalai Chettiar v. Muthukaruppan Chettyar*, may be referred to. It was held in that case by the Privy Council that Art. 62 does not apply to an equitable claim against a trustee liable to account and ascertainment of what may be due and such a cause falls under Art. 120.

The case on hand is not however, one for an account but for the payment of a specific amount received by the defendant for plaintiff's use. It does not follow if

the claim is an equitable claim and is made against a person in the position of a trustee Art. 120 necessarily applies. That article, indeed does not in terms, deal with such claims, being a residuary article. Some equitable claims and claims against the persons in the position of trustees have been held to fall under that article, as the claims could not be referred to any other article.

Other claims, not necessarily equitable in nature, nor against persons in the position of trustees have been held to come under that article, for the same reason, i.e. that they are not referable to any other article. Hence the true test is to see whether any other article clearly applies to the nature of the claim in the suit, before resorting to Art. 120. It may be mentioned, even in regard to equitable claims for money, which must be regarded as received by the defendant for the use of the plaintiff as arising from an implied contract, other articles than 62 may be applicable.

In the illustrations given in the passages quoted from the decision reported in ILR 32 Cal 527 which include money paid by mistake, or money paid as consideration which happens to fail, these are covered by Art. 96 and Art. 97 respectively. The learned Judges were obviously dealing with the nature of the action which was also one of the matters to be taken into consideration in the determination of the article of limitation applicable. The case on hand is, according to the facts established, clearly a case in which the money came into the hands of the defendant for the specific purpose of being paid over to the plaintiff. It therefore comes quite clearly under Art. 62.

A similar view was taken in *Masihuddin v. Imatizunnisa Bibi*, ILR 37 All 40: (AIR 1914 All 544). That was a case in which disputes having arisen between the heirs of a deceased person the defendant was appointed to sell his stock-in-trade and pay up the creditors pending certain arbitration proceedings. The defendant sold certain property and paid up certain debts. The arbitration proceedings fell through. In a suit brought by one of the heirs for her share it was held that Article 62 applied. It will be noticed that the money's remaining in the defendant's hands after paying up the debts due to the creditors were held by him for the benefit of the heirs. In other words, the sale proceeds were received by him for the use of

the heirs and were payable to the heirs. He was in the position of a constructive trustee. The circumstances are analogous to those of the case on hand.

(6) In the light of what is stated above, it must be held that the suit having been filed more than three years after the receipt of the money by the defendant was barred. This revision petition is accordingly allowed, the decree of the Court below is set aside and the suit is dismissed with costs of both the Courts.

(7) Revision petition allowed.

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