

Govindareddy Vs. Narasimha Reddy

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Court : Karnataka

Decided On : Oct-29-1986

Reported in : ILR1987KAR128

Judge : Kulkarni, J.

Acts : [Limitation Act, 1963](#) - Schedule - Articles 58 and 68

Appeal No. : R.S.A. No. 93 of 1977

Appellant : Govindareddy

Respondent : Narasimha Reddy

Advocate for Def. : T.R. Rangaraju, Adv. for R-1 to 4

Advocate for Pet/Ap. : L.K. Sreenivasamurthy, Adv. for Law Associates

Disposition : Appeal allowed

Judgement :

Kulkarni, J.

1. This is a second appeal by the plaintiff against the order dated 7-10-1976 passed by the I Additional Civil Judge, Kolar in R.A. 139/73 dismissing the suit and thus reversing the judgment and decree dated 27-6-1973 passed by the Munsiff, Chickballapur, in O. S. 81/68 decreeing the suit.

2. The plaintiff filed a suit for a declaration of his title to the suit property i.e. electric pump, and for a declaration that he is entitled to obtain possession of the said property from the Court of Special First Class Magistrate, Chickballapur before whom the suit property was produced in connection with C. C. 131/66 on his file and that it may be delivered to the plaintiff and also for permanent injunction restraining the defendant No. 1 from taking possession of the suit property from the Court etc.

3. The plaintiff is the owner of the electric pump-set and he was also the owner of a bullock and a buffalo. They were stolen from the possession of the plaintiff on 3-10-64. On the basis of that complaint the police investigated into the case and submitted a 'B' report to the Court. It appears that the plaintiff complainant undertook to prove the case. When the case was pending, it appears that there was a compromise between the plaintiff and defendants 2 and 3 who were accused in C.C. 131/66. On the basis of that compromise, defendants 2 and 3 were acquitted. On the very day defendant No. 1 filed an application for the return of the property to him as it had been seized from his possession. The Magistrate ordered the return of the property to defendant No. 1 on 16-3-67. The plaintiff being aggrieved by that order approached the Sessions Judge in vain. The plaintiff approached this Court in Cr.R.P. 393/67. This Court directed the plaintiff to establish his title in a Civil Court. Hence, the plaintiff filed the present suit O.S. 81/68.

4. Defendant No. 1 resisted the suit. Defendants 2 and 3, who were accused in the criminal case, remained absent.

5. The trial Court, on circumspection of the material, decreed the suit. Defendant No. 1 approached the Civil Judge, Kolar, with R.A.131/73. The Civil Judge held that the suit was barred by limitation and hence dismissed the suit. Hence, the second appeal.

6. The Munsiff as well as the Civil Judge have concluded that plaintiff is the owner of the suit property. The said conclusions are well-substantiated by material on record. I do not want to interfere with the said conclusions which are pure questions of fact. Therefore, the plaintiff has established his title to the suit

property.

7. The trial Court held that Article 58 was applicable to the facts of the case and so it held that the suit was in time. However, the lower appellate Court held that it was Article 68 of the Limitation Act that was applicable to the case and hence, it held that as the suit had been filed beyond 3 years from the date of theft, the suit was barred by time.

8. Article 68 of the Limitation Act reads :

'For specific movable 'When the person

property lost, or acquired having the right

by theft or dishonest Three years to the possession

misappropriation or of the property

conversion first learns in

whose possession

it is.

Therefore, it becomes crystal clear that Article 68 would apply when the plaintiff seeks a relief of possession of the property from the person who has come into possession of the property either by theft or dishonest misappropriation or conversion. As already stated above, it is not a suit for possession at all. The plaintiff had filed the complaint against defendants 2 and 3. He had not filed the complaint against defendant No, 1. Therefore, the lower appellate Court committed a mistake in holding that it is Article 68 of the Limitation Act that applies to the facts of the case It relied on Sohan Singh v. Mul Singh, I.C. 1911 Vol. XI, 446. It was a case where the owner of the stolen horses, without resort to the criminal Court, filed a suit against the defendant alleging that defendant had stolen that horses and that he was in possession of the stolen property. It was held in the said case that it was Article 48 of the old Limitation Act that applies to the facts of the case. The said, case was one for possession of the movables. The plaintiff in this

case has not sought for possession of the property from defendants 2 and 3 but has sought only for a declaration of title of the property. Therefore, the said case would not be applicable to the facts of the present case.

9. This Court has ruled in Cr. R.P. 393/67 that the plaintiff should seek the relief of title in a competent Civil Court. It is only after the disposal of the Criminal Revision Petition by this Court that the plaintiff has filed the suit seeking declaration of his title and seeking a declaration that he was entitled to the possession of the property and for an injunction restraining defendant No. 1 from taking possession of the property from the Magistrate Court.

10. Article 58 of the Limitation Act reads :

Description Period of Time from which period

of the suit limitation begins to run

To obtain any Three When the right to sue

other declaration. years. first accrues

The right to sue was available to him when this Court directed him to file a suit in the Civil Court. The said Cr. R.P. was disposed of on 15-2-68. The suit has been filed on 28-2-68. Therefore, it has been filed within 15 days from the date of the order passed by this Court. Therefore, it is Article 58 alone that would be applicable to the facts of the present case. The Munsiff was right in holding that Article 58 applied to the facts of the case. The lower appellate Court committed an error in holding that Article 68 applied to the facts of the case. In view of the conclusion that Article 58 applied to the facts of the case, the suit which has been filed within 15 days from the date of the order passed by this Court, is in time.

11. Under these circumstances, the judgment and decree passed by the lower appellate Court are set aside and the appeal is allowed. The decree passed by the Munsiff decreeing the suit is restored. The suit is decreed as prayed for by the plaintiff. Defendant No. 1 should pay the costs of the plaintiff throughout and bear his own.

