

Jiwan Singh Vs. Sarnam Singh

Jiwan Singh Vs. Sarnam Singh

SooperKanoon Citation : sooperkanoon.com/448906

Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1875)ILR1All97

Judge : Robert Stuart, C.J., ;Pearson, ;Turner, ;Spankie and ;Oldfield, JJ.

Appellant : Jiwan Singh

Respondent : Sarnam Singh

Judgement :

Robert Stuart, C.J.

1. I was a party to the decision of 1st May 1874, and to the opinion I then expressed I advisedly adhere. With regard to the present reference, I cannot say that an application for the execution of a decree is not a suit within the meaning of Section 15, Act IX of 1871. I think it is. It has been repeatedly held in England that the word 'suit' does include any proceeding instituted for the purpose of obtaining any beneficial order or relief, and that a petition presented for this purpose was a suit; and I observe it has been used in that sense in the practice of the American Courts. In Kent's Commentaries on the American Law, vol. i, p. 314, note (d), 11th ed. published in 1867, two cases are referred to in which it was decided that a mandamus is a 'suit, for it is a litigation in a Court of Justice seeking a decision,' and in the Calcutta case referred to by the Officiating Judge of Ghazipur (Hurro Chunder Roy Choudhry v. Shoorodhonee Debia 9 W.R. 402), the following

passage occurs in the judgment of Sir Barnes Peacock, Chief Justice:--'The word 'suit' does not necessarily mean an action, nor do the words 'cause of action' and 'defendant' necessarily mean cause upon which an action has been brought, or a person against whom an action has been brought, in the ordinary restricted sense of the words. Any proceeding in a Court of Justice to enforce a demand is a suit; the person who applies to the Court is a suitor for relief; the person who defends himself against the enforcement of the relief sought is a defendant; and the claim if recoverable, is a cause of action.' The meaning of this, I think, is that the word 'suit,' as used in Section 15 of the Limitation Act, does not mean a suit or action in an exclusively technical sense, but simply and generally any proceeding intended and adapted to the recovery or vindication of any right or demand or material advantage. Such was undoubtedly the meaning put upon the word 'suit' by lawyers before Act IX of 1871 was passed; and the question therefore is whether there is anything in that Act to change the construction which up to that time had been put upon the term. I do not see that there is, nor do I understand that the mere mention of applications in the Act distinct from suits can have the effect of limiting the general relief of benefit that by Section 15 is intended. I would, therefore, answer this reference by saying that the above ruling is right, and that an application for the execution of a decree is a suit within the meaning of Section 15, Act IX of 1871.

Pearson, J.

2. I was myself a party to the decision of the 17th June 1872', and on reconsideration adhere without hesitation or doubt to the opinion therein expressed. Throughout the Act IX of 1871 the distinction between suits and applications is never forgotten; they are never confounded together. The particular Section (15) which we have to consider enacts that, 'in computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another suit, whether in a Court of First Instance or in a Court of Appeal, against the same defendant or some person whom he represents, shall be excluded, where the last-mentioned suit is founded on the same right to sue, and is instituted in good faith in a Court which, from defect of

jurisdiction or other cause of like nature, is unable to try it.' The cases in which a plaintiff may honestly make a mistake as to the Court in which his suit should be brought are not unfrequent; and therefore the provision contained in Section 15 is quite suitable to a suit. But the case in which a decree-holder could bond fide attempt to execute his decree in a wrong Court must be very peculiar and exceptional; and a general provision of law is therefore not required to meet a case which can hardly ever occur. It is remarkable that Sections 16, 17, * 18, 19,++ and 20 are only applicable to original suits; and it may reasonably be assumed that, if Section 15 had been intended to apply to applications for execution of decree as well as to suits, the intention would have been expressed and made known in an explanation like explanation 2, which intimates that 'a plaintiff resisting an appeal presented on the ground of want of jurisdiction shall be deemed to be prosecuting a suit within the meaning of this section.' In the absence of any such explanation, regard being also had to the distinction which is observed throughout the Act between suits and applications, I conceive that Section 15 must be held to apply to suits as distinguished from applications, and that the word suit as distinguished from applications, and that the word suit therein used does not include an application for the execution of a decree.

Turner, J.

3. I concur in the opinion delivered by Mr. Justice PEARSON, and place the same construction on the 15th section of Act IX of 1871 as I have heretofore placed on the similar section, Act XIV of 1859.

Spankie, J.

4. I accept Mr. Justice Pearson's opinion as conclusive on the point referred to us.

Oldfield, J.

5. Looking to the terms of Section 15 Act IX of 1871, I do not think the provisions of that section were intended to apply to applications for execution of decrees, but only to suits in their strict sense.

6. It will be observed that throughout Act IX of 1871, a distinction is made between suits, appeals and applications. It is to be found in the preamble of the Act, and again notably in Section 4, and in the second schedule, which prescribes the period of limitation applicable to three divisions of subjects, suits, appeals and applications, amongst the last of which are found enumerated applications for executions of decrees.

7. I think Act IX of 1871 clears up what was obscure in Act XIV of 1859, under which the word suit may have been used in a wide sense, so as to include an application to enforce execution of a decree.

8. The title of Act XIV of 1859 is an 'Act to provide for the limitation of suits,' and the preamble is 'whereas it is expedient to amend and consolidate the laws relating to limitation of suits, it is enacted as follows:' but the title and preamble of Act IX of 1871 differ materially. Act IX of 1871 being 'An Act for the limitation of suits and for other purposes,' and it recites, 'whereas it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts, etc.' Whereas in Act IX of 1871, suits and applications are separately treated, the word suit cannot, I apprehend, be held to mean and include an application.

Exclusion of time during *[Section 17 :--In computing the period of limitation presented

which judgment-debtor for a suit for possession by a purchaser at a sale in execution of

sues to set aside execution a decree, the time during which the judgment-debtor has been

sale. prosecuting a suit to set aside the sale shall be excluded.]

?[Section. 18:--When a person who would, if he were willing, have a right to sue, dies before

Effect of death before the right accrues, the period of limitation shall be computed from

right to sue accrues. the time when there is a representative in interest of the deceased

capable of suing.

When a person against whom, if he were living, a right to sue would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a representative when the plaintiff may sue.

Nothing in the former part of this section applies to suits for the possession of land or of an hereditary office.]

⁺⁺[Section 19:--When any person having a right to sue has, by means of fraud, been kept

Effect of fraud. from the knowledge of such right or of the title on which it is founded,

and where any document necessary to establish such right has been fraudulently concealed,

the time limited for commencing a suit,

(a) against the person guilty of the fraud or accessory thereto, or,

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.]

[Section 20:--(a) No promise or acknowledgment in respect of a debt or legacy shall take

the case out of the operation of this Act, unless such promise or

Effect of acknowledg- acknowledgment is contained in some writing signed, before the

ment in writing, expiration of the prescribed period, by the party to be charged

therewith or by his agent generally or specially authorized in

this behalf.

(b) When such writing exists, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the promise or acknowledgment was signed.

Explanation 1 :--For the purposes of this section, promise or acknowledgment may be sufficient, though it omits to specify the exact amount of the debt or legacy, or avers that the time for payment or delivery has not yet come, or is accompanied by a refusal to pay or deliver, or is coupled with a claim to a set off or is addressed to any person other than the creditor or legatee; but it must amount to an express undertaking to pay or deliver the debt or legacy or to an unqualified admission of the liability as subsisting.

Explanation 2 :--Nothing in this section renders one of several partners or executors chargeable by reason only of a written promise or acknowledgment signed by another of them.]

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com