

Panchoo and anr. Vs. Ram Sunder and anr.

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Court : Allahabad

Decided On : Mar-11-1943

Reported in : AIR1943All294

Appellant : Panchoo and anr.

Respondent : Ram Sunder and anr.

Judgement :

ORDER

Mulla, J.

1. This is an application in revision under Section 25, Small Cause Courts Act. The applicants here were the defendants in the Court below. The suit was brought by the opposite parties, Ram Sunder and Kandhai, to recover a certain amount which, they alleged, they had lent to the defendants under two mortgage deeds, one dated 7th October 1918, and the other 12th September 1920. The case put forward by the plaintiffs was that when the two mortgage deeds were executed they were put in possession of two occupancy plots by the defendants and they continued to be in possession of those plots up till the year 1347 Fasli when their possession was forcibly ousted by the defendants. They alleged that when they were thus dispossessed they brought a suit to recover possession under Section 9, Specific Relief Act. That suit was dismissed on the ground that they were never in physical possession of the property within six months of the suit. In the course

of that suit, it appears that one of the defendants made a statement to the effect that he had been paying rent of the plots in dispute to the plaintiffs. Upon the dismissal of that suit, the opposite parties launched the pre-sent suit out of which this application in revision arises. In this suit they simply claimed to recover the amount which they had lent to the defendants.

2. The suit was resisted by the defendants on various grounds: firstly, that the contract being void ab initio the plaintiffs were not entitled to recover anything upon such a contract; secondly, that the suit was barred by time and thirdly, that the money payable by the defendants had already been paid up and. hence there was nothing due to the plaintiffs. The learned Small Cause Court Judge found that the plea of payment raised by the defendants had not been established. He further found that though the plaintiffs were not entitled to any relief on the basis of the mortgage bonds because they were void ab initio, yet they were entitled to compensation under Section 65, Contract Act, which runs as follows:

When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

3. In support of this contention he has referred to several cases decided by various High Courts as against two eases of this Court in which, as he points out, no reference was made to Section 65, Contract Act. The learned Small Cause Court Judge has also repelled the defendants' plea of limitation as a bar to the suit on the ground that the plaintiffs were in possession of the property covered by 'the mortgage up till the year 1347 Fasli; in the earlier suit under Section 9, Specific Relief Act, one of the defendants admitted the fact that he had paid rent for the lands in suit to the plaintiffs. The suit has accordingly been decreed; hence the present application in revision.

4. The main ground upon which this application is pressed is that the suit is clearly barred by limitation and the grounds stated by the learned Small Cause Court Judge for holding otherwise are really irrelevant to the issue. Upon a careful consideration of the argument, I am inclined to hold that it is sound and must

prevail. It is admitted that the two mortgage deeds were void ab initio and hence the plaintiffs were not entitled to any relief on the basis of those deeds. I am inclined to agree with the learned Small Cause Court Judge that the plaintiffs will still be entitled to claim that the advantage derived by the defendants under these void contracts should be restored to them under Section 65, Contract Act. I need not discuss the law on this point because the relevant cases have been referred to in the judgment of the learned Small Cause Court Judge. I shall assume for the purposes of argument that the plaintiffs are entitled to relief under Section 65, Contract Act. The question still re-mains whether the suit which they have brought is within limitation. Learned Counsel for the respondents urged that Section 20, Limitation Act, and particularly Sub-section (a) of that section applied to the case because payments of rent for the mortgaged lands was admitted by one of the defendants in the earlier suit under Section 9, Specific Relief Act. Assuming for a moment that Section 20, Limitation Act, has any application to a claim which can prevail only under Section 65, Contract Act, the simple fact remains that the payments which were acknowledged by one of the defendants were admittedly made towards a loan taken under a contract which was void ab initio. Those payments were by no means acknowledgments of the defendants' liability under Section 65, Contract Act. It is evident, therefore, that the respondents cannot possibly derive any advantage from the admissions made by the defendant in the earlier suit for the purpose of extending the limitation for a suit under Section 65, Contract Act. Now, the question is: what is the period of limitation applicable to such a suit? In the present case it is admitted that the contract was void ab initio and in regard to such cases their Lordships of the Privy Council have laid down a general principle in *Hanuman Kamat v. Hanuman Mandar* ('93) 19 Cal 123. Their Lordships were dealing with the case of sale of certain property by one member of the joint family which was subsequently found to be invalid and whereupon the vendee brought a suit to recover the consideration for the sale. They observed in their judgment as follows:

Article 97 applies to a suit to recover money upon an existing consideration which afterwards fails, and it says that the period of limitation is to date from the time when the consideration failed. Their Lordships are of opinion that the case must fall either within Article 62 or Article 97. If there never was any consideration, then

the price paid by the appellant was money had and received to his account by Dowlut Mandar.

5. It is evident that their Lordships pointed out that where a transaction is void ab initio and a suit is brought for recovering the amount for consideration for that transaction it must fall within the purview of Article 62, Limitation Act. Article 97, Limitation Act, can apply only to cases in which there is a consideration existing at one stage but fails subsequently. In the present case, it is evident that the consideration from the very beginning was wholly unlawful and the contracts were therefore void ab initio. It can-not be urged that the consideration failed at any subsequent stage. Article 97, Limitation Act, has therefore no application and the suit must therefore be governed by Article 62, Limitation Act, as laid down by their Lordships of the Privy Council. Now, the limitation for a suit which falls within the purview of Article 62, Limitation Act, is three years and the period begins to run from the date when the money is received.

6. It is evident therefore that the suit in the present case is clearly time-barred, for the two mortgage transactions came into existence, as stated above, one on 7th October 1918 and the other on 12th September 1920. The consideration for these two deeds was received on the dates on which they were executed and the suit was not brought until 4th March 1941. I have already pointed out that Section 20, Limitation Act, has in my judgment no application whatsoever and it cannot extend the period of limitation for the suit. With regard to the applicability of Article 62, Limitation Act to a case like the present there have been many cases decided in various Courts subsequent to the decision of their Lordships of the Privy Council referred to above. I need only refer to two of these cases which are upon their facts very similar to the present case: first, Omrao v. Ramadhar ('25) 12 A.I.R. 1925 Nag. 130 and second, Bai Diwali v. Umedbhai Bhulabhai ('16) 3 A.I.R. 1916 Bom. 318. With regard to the applicability of Section 65, Contract Act, to a claim like the one brought by the plaintiffs in the present case, I may refer to a case decided by their Lordships of the Privy Council reported in Annada Mohan Boy v. Gour Mohan Mullick ('23) 10 A.I.R. 1923 P. C. 189. In that case their Lordships have pointed out that the time at which such an agreement is 'discovered to be void,' so that a cause of action to recover the consideration arises under Section

65, Contract Act, 1872, in the absence of special circumstances, is the date of the agreement.

7. This case was followed by another decision of their Lordships which is reported in *Hansraj Gupta v. Dehra Dun-Mussoorie Electric Tramway Co. Ltd.* In this latter case their Lordships re-affirmed the same principle and referred to their previous case, *Annada Mohan Boy v. Gour Mohan Mullick* ('23) 10 A.I.R. 1923 P. C. 189. Learned Counsel for the opposite parties referred to another case of their Lordships of the Privy Council in *Thakurain Harnath Kuar v. Thakur Indar Bahadur Singh* ('22) 9 A.I.R. 1922 P. C. 403 and contended on that basis that there were special circumstances in the present case which would entitle the plaintiffs to claim that the discovery of the void nature of the contract was made by the plaintiffs at a subsequent stage and hence limitation should not be deemed to have begun to run on the date on which the money was received. In the first place, it is enough to point out that there could be no special circumstances in the present case because the two mortgage bonds were void ab initio. The consideration was unlawful and every person is presumed to know the law. Indeed their Lordships of the Privy Council have themselves pointed out in the later case in *Annada Mohan Boy v. Gour Mohan Mullick* ('23) 10 A.I.R. 1923 P. C. 189 that where the parties know the law or must be presumed to have known it there can be no question of any special circumstances entitling the plaintiff to contend that the void nature of the transaction was discovered at a subsequent stage. They have referred in this later case to the case in *Thakurain Harnath Kuar v. Thakur Indar Bahadur Singh* ('22) 9 A.I.R. 1922 P. C. 403 relied upon by learned Counsel for the opposite parties and have shown that there were in that particular case certain special circumstances which justified the conclusion that the discovery was made at a subsequent stage. In both cases to which I have referred their Lordships have laid down in very clear and unambiguous terms that in the absence of any special circumstances the date on which the money is received is the date of the discovery of the void nature of the transaction and limitation must be deemed to begin to run from that date. The result therefore is that I find that the suit brought by the plaintiff was clearly barred by limitation. The facts upon which the learned Small Cause Court Judge relied in repelling the bar of limitation raised by the defendant-applicants were wholly immaterial to the issue. I therefore allow this

application in revision and dismiss the opposite parties' suit with costs.

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