

Jagdish Prasad Vs. Raghubir and ors.

Jagdish Prasad Vs. Raghubir and ors.

SooperKanoon Citation : sooperkanoon.com/454621

Court : Allahabad

Decided On : Feb-23-1926

Reported in : AIR1926All462; 94Ind.Cas.336

Appellant : Jagdish Prasad

Respondent : Raghubir and ors.

Judgement :

Walsh, J.

1. I cannot interfere in this appeal. The plaintiff sues, as zamindar, some occupancy tenants who cut down some trees and sold them. The case is not without its humorous aspect. The plaintiff alleged that the trees were cut down in April 1922. He did not say that there was theft or concealment, so as to make Article 48 applicable, or that the matter came to his knowledge at a later date. What he said was that inspite of repeated demands for the money, not for the trees, the defendants refused to pay, and he claimed damages to the extent of Rs. 500. It reads like a claim for trespass upon immovable property in cutting down the trees and for conversion of moveable property by turning them into money after they have been cut down. This would be prima facie a theft; but inasmuch as the defendants are occupancy tenants of the zemindar there is a contract between them, and to cut down trees in breach of the landlord's right is clearly a breach of contract. So the action might be said to relate to compensation for breach of

contract. All this would be unimportant in the ordinary way, because the plaintiff can always waive the contract; but the humorous part of the case is that, according to the finding of the lower Court the plaintiff, having thought that he had a perfectly good claim for Rs. 500 deliberately waited until the Statute of Limitation became a serious difficulty in his way, and then commenced this suit, fraudulently alleging that the act complained of occurred years after it really did, when everybody knew that it was a lie. This sounds like the conduct of a lunatic; but I am bound by the findings of the lower Court in the matter. The plaintiff, having selected this curious line to adopt, did not bother himself about the Statute of Limitation, but the defendants did, and admitted that they had sold the trees in the exercise of their lawful right about four years before the suit and that the plaintiff's claim was barred by three years' limitation. They were very careful not to say by which article. It would have been much better if the Courts below had discussed the case on the merits because, if the defendants had done it tender a right, no puzzle would have arisen about the statutory limitation. But the lower appellate Court has found that the trees were cut more than four years ago and that the claim is time-barred. It obviously meant to hold that a period of three years barred the suit; but it obviously followed the example of the defendants and refrained from deciding which article was applicable, so that the plaintiff was in this position: that the findings of the Courts below had entirely altered the aspect of his case and he found himself with a time-barred claim, although nobody concerned had ventured to say why it was time-barred. So he hit upon the ingenious idea-this is another humorous aspect of this case-of selecting Article 120, for which six years were provided. Now Article 120 says that six years is applicable to a suit for which no period of limitation is provided elsewhere; and one cannot blame him (the plaintiff); if neither his opponents nor two Courts of justice had discovered any article, which was applicable in this case, he should ask this Court to hold that this is a suit for which no article can be found elsewhere. That would be an extremely easy solution of this case. I am afraid that several articles can be found elsewhere, and the only difficulty that I have is to decide which is the right one. As this is an act done by an occupancy tenant in excess of his right, it clearly arises out of contract, and it seems to me impossible to hold that it is not a suit for compensation for the breach of an implied contract not specifically provided for in the Limitation Act, the

implied contract being not to cut down trees. It seems to me also that Article 49 must apply. Articles 48 and 49 may be read together. Article 48 distinctly deals with specific moveable property acquired by theft or dishonest misappropriation and for compensation for wrongfully detaining the same. Nobody could say that there is anything of this kind here. It has not been found, but the defendants by their written statement, claim that they had a right to cut down the trees. It would be, therefore, wrong, and I do not know why the learned vakil asks this Court to hold that they were guilty of theft in cutting down the trees, Article 49 to my mind covers all other cases of specific moveable property wrongfully taken, or wrongfully detained, which do not arise out of theft or dishonest conversion as provided by Article 48, and although to cut down trees in breach of an occupancy tenancy agreement is not only a breach of the agreement but also a trespass to immovable property, yet when the trees have been cut down, they certainly become specific moveable property, and if they are taken away and sold, the suit is one for compensation as defined by Article 49. This is the view that has been taken in the Full Bench reference in Calcutta in 1898, to which Mr. Nehal Chand drew my attention, reported in *Mangun Jha v. Dolhin Golab Koer* [1898] 25 Cal 692. I agree with that. There are other articles, which, it seems to me, might be made applicable, but it is not necessary to discuss them. There is ample ground for holding, as the lower Court did, that a period of three years at the most is the period within which the plaintiff ought to have sued, and that on the finding his claim is barred.

2. The appeal must be dismissed with costs, including in this Court fees on the higher scale.