Ram Bux Vs. Ram Karan and ors.

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SooperKanoon Citation : sooperkanoon.com/459146

Court : Allahabad

Decided On : Sep-16-1980

Reported in : AIR1981All6

Judge : Deoki Nandan, J.

Acts : Limitation Act, 1908 - Sections 14 - Schedule - Article 12

Appeal No. : Second Appeal No. 1436 of 1968

Appellant : Ram Bux

Respondent : Ram Karan and ors.

Advocate for Def. : G.L. Yadav and ;K.N. Sinha, Advs.

Advocate for Pet/Ap. : M.C. Agarwal, Adv.

Disposition : Appeal dismissed

Judgement :

Deoki Nandan, J.

1. The first point which arises for consideration in this second appeal by the plaintiff is of limitation, The point arises this way. The plaintiff-appellant in the present case was the judgment-debtor in Suit No. 483 of 1952 of the Court of Munsif Jaunpur in execution of the decree; in that suit agricultural land belonging

to the present plaintiff-appellant were attached on 21-12-1953. Proceedings for execution of that decree by sale of the agricultural land were taken by the Collector, Jaunpur, 20-4-1955 was the date fixed for the auction sale and the land was sold for Rs. 744/-. The 7th defendant respondent Shyam Charan was the auction purchaser. It is alleged that the present plaintiff-appellant deposited the sum of Rs. 789/- on 18-5-1955 within 30 days of the sale before the Collector and applied for setting aside of the sale. Having done so, the plaintiff went home thinking that the sale would be set aside, but it appears, according to the plaintiff's case, that the decree-holder in that suit objected to the setting aside of the sale and the notice of the hearing of the decree holders' objection was served by affixation on the plaintiff-appellant. It is further the case of the plaintiff-appellant that the service of the notice on him was fraudulent. This was followed by confirmation of the sale on 18-8-1955 and possession is also said to have been taken by the auction-purchaser on 6-6-1956. It is said that the proceedings for delivery of possession were also fictitious and it was in July 1956. When the auction-purchaser interefered with the cultivation of the land by the present plaintiff-appellant, that he came to know about the confirmation of the sale. The present plaintiff-appellant then moved on 7-7-1956 an application for review and setting aside of the sale. The application was dismissed on 18-6-1958 on the ground that the order of confirmation of sale was appealable. The present plaintiff-appellant then applied for revision. The revision was dismissed by the Board of Revenue on 4-1-1961. He then applied to this Court under Article 226 of the Constitution. The writ petition was dismissed on 26-8-1965.

2. The present suit was filed on 26-11-1965 and the relief sought is the cancellation of the auction sale dated 29-4-1965 in execution of decree in Suit No. 483 of 1952.

3. The limitation for filing a suit was one year under Article 12 of the First Schedule to the Indian Limitation Act 1908 from the date when the sale is confirmed, or otherwise would have become final and conclusive, had no such suit been brought. The sale in the present case was, on the plaintiff-appellants' own allegation, confirmed on 18-8-1955. One year limitation under Article 12 of the First Schedule to Indian Limitation Act expired on 18-8-1956 but the suit was filed

more than 9 years thereafter. This period was sought to be explained with the aid of Section 14 of the Indian Limitation Act 1908 which runs as follows:--

'Exclusion of time of proceedings bona fide in Court without jurisdiction -- (1) In computing the period of limitation prescribed for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceedings whether in a Court of first instance or in a Court of appeal, against the defendant shall be excluded where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of like nature, is unable to entertain it,

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceedings, whether in a Court of first instance, or in a Court of appeal, against the same party for the same relief shall be excluded where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

Explanation I -- In excluding the time during which a former suit or application was pending the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation II -- For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

'Explanation III -- For the purposes of this section misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.'

I have referred to the provisions of Indian Limitation Act 1908 and not to the provisions of the Limitation Act 1963 although the suit was filed in November, 1965 after the Indian Limitation Act. 1908 had been repealed and the Limitation Act 1963 had come into force because according to Section 31(4) of the Limitation Act, 1963 nothing in the Act shall enable any suit to be instituted for which the period of limitation prescribed by the 1908 Act had already expired before the commencement of the 1963 Act.

4. The question which was raised in this context was whether the plaintiff-appellant could be said to have been prosecuting the said review proceedings with due diligence such as to entitle him to the exclusion of the entire period occupied thereby in computing the limitation. However I must make it clear that Section 14 of the Indian Limitation Act, 1908 could not be invoked at all in the present case. The sale was confirmed on 18-8-1955. The review application was filed on 7-7-1956 and even if the proceedings under Article 226 of the Constitution in this Court, were assumed to have been part of the review proceedings, the entire proceedings came to an end on the dismissal of the writ petition on 26-8-19(65. Even if the entire period from 7-7-1956 to 26-8-1965 is excluded in computing the period of limitation, only 42 days were left for filing this suit from the date of the dismissal of the writ petition. But the suit was filed on 26-11-1965 i.e. three months after dismissal of the writ petition. There is no power under the Indian Limitation Act to condone the delay in the institution of the suit after the expiry of 42 days from the date of the dismissal of the writ petition.

5. It is accordingly unnecessary for me to go into the question whether or not the plaintiff-appellant prosecuted the review proceedings in good faith. I may merely observe that the burden was entirely on the plaintiff-appellant to show that he acted with due care and attention. (See Madhavrao Narayanrao Patwardhan v. Ram Krishna Govind Bhanu, (AIR 1958 SC 767). However, on the broad facts of the case, recited above, it would be very difficult to say that the plaintiff-appellant acted with due care and attention when he delayed filing of the suit for so long and the finding of the lower appellate Court on this point seems to be correct.

6. The appeal fails and is dismissed. But, in the circumstances of the case, I would make no order as to cost.