

Ram Mehar Vs. Mukhtar Singh

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Court : Allahabad

Decided On : Feb-07-1980

Reported in : AIR1980All282

Judge : S.D. Agarwal, J.

Acts : [Limitation Act, 1963](#) - Schedule - Article 80; [Code of Civil Procedure \(CPC\), 1908](#) - Order 21, Rules 58 and 63

Appeal No. : Second Appeal No. 2956 of 1967

Appellant : Ram Mehar

Respondent : Mukhtar Singh

Advocate for Pet/Ap. : K.B.L. Gaur, Adv.

Disposition : Appeal allowed

Judgement :

S.D. Agarwal, J.

1. This is a plaintiff's second appeal arising out of a suit filed by the appellant for recovery of Rs. 1,800 with costs and pendente lite and future interest at 6 per cent per annum. The relevant facts are that the respondent Mukhtar Singh (who has died during the pendency of this appeal and whose heirs have been brought on

record) filed a Suit No. 307 of 1961, for the recovery of money against one Shiv Dayal Singh in the court of the 1st Addl. Munsif, Ghaziabad. Mukhtar Singh also moved an application for attachment of the brick kiln which belonged to the plaintiff appellant. In spite of the fact that Shiv Dayal Singh had no concern with the brick kiln the application for attachment before judgment was allowed and the whole brick kiln was attached on 18th May, 1961. The appellant preferred an objection. He was successful in part in getting a portion of the brick kiln released except one and a half lakhs bricks which were still kept under attachment. Thereafter an objection was filed under Order 21, Rule 58. C.P.C. in regard to the attachment of one and a half lakhs of bricks. These objections were dismissed. The appellant thereafter filed a suit under Order 21, Rule 63, C.P.C. for a declaration that the bricks were not liable to attachment. The said suit was decreed on 1st April, 1964, on 26th Jan. 1965 the present suit was filed for recovery of damages mentioned above. The respondent contested the suit on merits as well as on the ground that the suit was barred by limitation.

2. The trial court held that the plaintiff appellant was entitled to damages of Rs. 1,500 but the suit was dismissed on the ground that the suit was barred by time. This judgment of the trial court is dated 2-6-1966. Against the said judgment an appeal was filed by the appellant. The lower appellate court only heard the arguments of the parties on the question of limitation and held that the suit was barred by limitation and hence dismissed the appeal on 19-10-1966. Aggrieved against the said judgment the present appeal has been filed.

3. Sri K. B. L. Gaur, Senior Advocate appearing on behalf of the appellant, has contended that the view taken by the trial court as well as by the lower appellate court that the suit is barred by limitation is a view contrary to law.

4. The suit was filed on 26-1-1965 and as such the provisions of the new [Limitation Act, 1963](#) would apply to the instant case. The relevant article is Article 80. Article 80 reads as follows:--

'For compensation for wrongful seizure of movable property under legal process,
One year.

The date of the seizure,'

5. The argument of the learned counsel is that no doubt the brick kiln was attached on 18th May, 1961 but the attachment became wrongful on 21st April, 1964 when the suit of the appellant under Order 21, Rule 63 was decreed by the trial court and as such according to him the period of limitation, named, one year, should start from 21-4-1964. Learned counsel has further contended that Section 22 of the Limitation Act was applicable in the instant case which provides that in the case of continuing breach of contract or in the case of a continuing tort a fresh period of limitation begins to run at every moment of time during which the breach or the tort, as the case may be, continues. His submission, therefore, is that since the tort continued till 21-4-1964 he was entitled to the period of limitation from 21-4-1964. In case the commencement of the period of limitation is taken from 21st April 1964 the suit would be of course clearly within time.

6. It is not necessary for me to consider the second aspect of the submission made by the learned counsel because in my opinion in accordance with the first aspect of the submission made by the learned counsel the period of limitation would start from the 21st April, 1964.

7. Admittedly, the appellant filed objections under Order 21, Rule 58, C.P.C. against the attachment of his bricks in the brick kiln. These objections were dismissed by the court which issued the attachment order.

8. In the circumstances the attachment was held to be a valid attachment. Thereafter the appellant filed a suit under Order 21, Rule 68, C.P.C. and the said suit was decreed by the trial court on 21st April, 1964. By this decree the attachment was declared illegal. In the circumstance the appellant could treat the seizure as being wrongful with effect from the date 21st April, 1964. In this view of the matter the suit having been filed within one year of that date was well within time. In the third column of Article 80 the expression 'the date of the seizure' should be read along with the first column of Article 80. The seizure referred to in the first column is wrongful seizure. Therefore 'the date of the seizure in the third column should be taken to be the date of wrongful seizure. The date of wrongful seizure being 21st April 1964 the suit was well within time. In view of the above

the suit is not barred by time.

9. The appeal is accordingly allowed, the judgment of the lower appellate court is set aside and the appeal is remanded to the lower appellate court with a direction that it shall re-admit the appeal to its original number and decide the same on merits in accordance with law. In the circumstances of the case parties are directed to bear their own costs.

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