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Court : Allahabad

Decided On : Oct-06-1950

Reported in : AIR1951All485

Judge : Kidwai, ;Chandiramani and ;Agarwala, JJ.

Acts : Tenancy Law; Uttar Pradesh Tenancy Act, 1939 - Sections 180; Uttar Pradesh Tenancy (Amendment) Act, 1947 - Sections 32; General Clauses Act, 1897 - Sections 6

Appeal No. : Second Rent Appeal No. 13 of 1946

Appellant : Raghuraj Singh

Respondent : Sobhaman

Advocate for Def. : Ram, Adv.

Advocate for Pet/Ap. : Naimullah, Adv.

Judgement :

Agarwala, J.

1. Two questions have been referred to this Full Bench:

(1) Does the alteration made by Section 32, U. P. Tenancy (Amendment) Act (X [10] of 1947) in the period of limitation for a suit under Section 180, U. P. Tenancy

Act, govern suits instituted before the enactment came into force ?

(2) Can the new rule of limitation be applied for deciding cases which have reached the stage of appeal ?

2. The facts which gave rise to the reference have been stated in the referring order of Misra J. Briefly they are as follows. A suit was filed under Section 180, U. P. Tenancy Act, on 2-1-1943 for possession over six plots in village Khainchulwa, Pargana Amsin, district Faiza-bad, and for recovery of damages amounting to Rs. 48. The suit was filed by the plaintiff Sobhaman, an under-proprietor. His case was that he was dispossessed from the plots by the defendant-appellant Raghuraj Singh in the year 1942. The defendant-appellant Raghuraj Singh is one of the cosharers in the relative superior proprietary khata. Raghuraj Singh denied the plaintiff's title and pleaded adverse possession and the bar of limitation.

3. The trial Court dismissed the suit on 12-4. 1944. On appeal the District Judge held that the plaintiff was an under-proprietor and that adverse possession by the defendant had not been proved but remanded the case for a finding on the question of the plaintiffs possession within limitation.

4. Raghuraj Singh's contention was that the plaintiff had been dispossessed in 1343 F. corresponding to the year 1935-36 when the Oudh Rent Act was still in force and that under Section 108 (10) the period of limitation being one year, the plaintiff had lost his right absolutely to the property before the U. P. Tenancy Act, which provided for an extended period of limitation came into force and as such the plaintiff could not take advantage of the latter Act.

5. The Munsif on remand accepted the defendant's plea. But the lower appellate Court rejected it on the ground that the plaintiff could not have filed the suit in the revenue Court for recovery of possession against the defendant, who was one of the cosharers in the superior proprietary rights and therefore, not a 'landlord' against whom alone a suit under Section 108 (10), Oudh Rent Act, could be instituted in the revenue Court and that therefore he had a period of 12 years limitation and not of one year for his suit if one were to be filed before the U. P. Tenancy Act came into force. He further held that under Section 180, U. P.

Tenancy Act, (as it stood at the date of the suit), the period of limitation was, when the unauthorised occupation was not more than 9 years at the date of the suit, 3 years from the 1st of July following the date of unauthorised occupation or following the date of commencement of the Act whichever was greater. The lower appellate Court, therefore, held that the suit was within time and it decreed the suit by an order dated 9-11-1945. Against this decree the defendant filed the above second appeal on 7-2-1946.

6. During the pendency of this appeal the D, P. Tenancy Act was amended by Act X [10] of 1947. By Section 32 of this Act, the period of limitation of 3 years was reduced to 2 years with the result that if the amendment was retrospective and applied to the case, the suit was liable to be dismissed, though it was within time when it was filed. The learned single Judge, therefore, referred the questions mentioned above for decision by a Full Bench.

7. The question referred to us have to be answered upon an interpretation of Section 31, Amending Act. Section 31 runs as follows:

'(1) All proceedings, suits, appeals and revisions pending under the said Act on the date of the commencement of this Act and all appeals and revisions filed after that date against orders or decrees passed under that Act and all decrees and orders passed thereunder which have not been satisfied in full, shall be decided or executed, as the case may be and where necessary such decrees and orders shall be amended, in accordance with the provisions of the said Act as amended by this Act :

Provided firstly that if such a decree or order cannot be so amended, or the execution of or the appeal or revision from such an amended decree or order cannot be proceeded with, it shall be quashed. In such a case, the aggrieved party shall, notwithstanding any law of limitation be entitled to claim, within six months from the date on which such decree or order is quashed, such rights and remedies as he had on the date of the institution of the suit or proceeding in which such decree or order was passed, except in so far as such rights or remedies are inconsistent with the provisions of the said Act as amended by this Act : Provided secondly that the proceedings under Section 53 between a landholder and his

tenant and all proceedings under Section 54 shall be quashed :

Provided thirdly that appeals and revisions arising out of the proceedings under Section 53 between a landholder and his tenant or out of those under Section 54 shall be so decided as to place the parties in the same position in which they were immediately before the institution of such proceedings :

Provided fourthly that all suits, appeals and revisions pending under Section 180 of the said Act, on the date of the commencement of this Act for the ejectment of any person who was recorded as an occupant on or after the first day of January 1938, in a record revised under Chap. IV, U. P. Land Revenue Act, 1901, or corrected by an officer specially appointed for the correction of annual registers in any tract, shall be dismissed, and all decrees and orders for the ejectment of such persons, which have not been satisfied in full on the date of the commencement of this Act, shall be quashed :

Provided fifthly that nothing in this sub-section shall affect the forum of appeal or revision from a decree or order passed by a civil Court under the said Act.

(2) ******* *'

8. It is true that rules of limitation which provide periods beyond which claims though otherwise sound must be held to have become stale must be strictly construed because they prevent a person's legitimate claim being heard and determined by Courts of law. It follows from this that where the language of the statute is not clear, judicial construction must favour the plaintiff's right to sue.

9. It is further true that normally statutes are to be construed as referring to future events and are not to be given a retrospective effect. The reason is that it is difficult to assume that Legislature intended to deprive a litigant of a right already vested in him, as it shocks ones sense of justice that an act legal at the time of doing it should be made unlawful by some new enactment. The ratio is equally apparent when a new enactment is said to convert an act wrongfully done at the time into a legal act, and to deprive the person injured of the remedy which the law then gave him.

10. There is a further corollary which flows from this rule and it is that even if an enactment is retrospective in operation, it should not be given a larger retrospective effect than is absolutely necessary. These propositions are so well-settled that it is not necessary to cite many authorities, (see for instance, Reg. v. Ipswick Union, (1877) 2 Q. B. D. 269 : (46 L. J. M. C. 207); Reid v. Reid, (1886) 31 Ch. D. 402 at p. 408 : (55 L. J. ch. 294) and Young v. Admass (1898) A. C. 469 : (67 L. J. P. C. 75). Even where an enactment is retrospective, it has been held that it does not necessarily affect pending cases. Under Section 6, General Clauses Act, 1897, the repeal of an enactment does not prima facie affect pending actions which are to be decided as if the repealed enactment was still in force. Again, the right to sue is a vested right and, although retrospective operation may be given to rules of procedure, no such operation can normally be given to a law of limitation when it affects a right of suit which was not barred under the law existing at the date when the suit was instituted or to revive a right which had already become barred.

11. But all these rules are subject to one condition and that is that the Legislature has not shown a contrary intention either in express words or by necessary implication; and, therefore, the only question that has to be decided is whether Section 31, Amending Act, X [10] of 1947, is retrospective in operation so as to affect the period of limitation which governs suits pending at the time of its enactment, whether they are pending in the trial Court or are in the stage of appeals or revisions.

12. I have no doubt that Section 31 has the effect contended for by the defendant-appellant.

13. Now actions pending at the time when a statute is enacted may consist of five classes of cases - (a) Actions which are pending in the trial Court, (b) Actions which have been already decided by the trial Court and an appeal or revision is pending therefrom, (c) Actions which have been already decided but an appeal or revision is filed after the commencement of the Amending Act. (d) Actions which have been already decided but execution has not been carried out in full, (e) Actions which have been already decided and execution has also been carried out

in full.

14. Section 31 deals with the first four classes of cases. It says that they are to be governed by the provisions of the U. P. Tenancy Act as amended by the Amending Act and not by the law as it stood before the commencement of the Amending Act. In the case of decrees or orders already passed, but which have not been satisfied in full, such decrees or orders shall be decided or executed as the case may be, or where necessary such decrees or orders shall be amended, in accordance with the provisions of the Amending Act, and where such decrees or orders cannot be so amended, or where the execution of or the appeal or revision from such amended decree or order cannot be proceeded with, they shall be quashed. In certain cases, certain suits or proceedings shall be dismissed : see provisos 2, 3 and 4. It is, only the 5th category of cases which are not affected by Section 31.

15. The language is explicit and leaves no room for doubt or ambiguity. Section 31 is retrospective in operation and pending proceedings as mentioned in that section are to be decided upon the footing that the law as amended by the Amending Act governs them. This is the view that has been consistently taken in a number of decisions, reported and unreported, of this Court as well as of the Board of Eevenue : vide Sangram Singh v. Lahar Singh : AIR1949 All662 (a decision by me); Khan-zaman v. Maqbul : AIR1950 All191 , dealing with the point of limitation Pheru v. Bhagwana : AIR1950 All96 ; Baijnath Pande v. Ram Das, 1947 R. D. 383; Jaideo Sharma v. Tulsa, 1947 R. D. 394; Bishnu Dayal v. Baijnath, 1948 R. D. 68 (2); Thakur Upadhya v. Beni Madho, 1948 R. D. 174 ; Sheoraj Singh v. Raja Jadambika Pratap Narain Singh, S. Rent Appeal No. 17 of 1944, decided on 28-11-1949 by my brother Chandiramani.

16. An ingenious argument was addressed to us. It was urged that in the present case the suit was not pending, that when the Amending Act came into force, a second appeal was pending, that the provisions of Section 31 that an appeal was to be decided in accordance with the Amending Act meant, so far as a change in the period of limitation was concerned, that the period of limitation for filing an appeal was to be that which was given in the Amending Act and that Section 31

did not say that the period of limitation prescribed for the institution of a suit was to be applied by the appellate Court in the decision of the appeal. In support of this argument reliance is placed upon the principle that the function of an appellate Court is merely to see whether the trial Court's order was correct on the date on which it was passed and the subsequent amendment of the law is not to be taken into account by the appellate Court.

17. The argument is fallacious. It is not correct to say that an appellate Court has no power to take into account changes in the law made subsequent to the passing of the trial Court's decree or order.

18. In Lachmeshwar Prasad Shukul v. Keshwar Lal , the matter was discussed at length and it was ruled that :

'The hearing of an appeal under the procedural law of India is in the nature of re-hearing and therefore in moulding the relief to be granted in a case on appeal, the appellate Court is entitled to take into account even facts and events which have come into existence after the decree appealed against. Consequently, the appellate Court is competent to take into account legislative changes since the decision in appeal was given and its powers are not confined only to sea whether the lower Court's decision was correct according to the law as it stood at the time when its decision was given.'

Where, therefore, the law clearly in express words or by necessary implication enacts that the appeal has to be decided in accordance with the law as amended after the passing of the trial Court's decree or order, or where a decree or order passed by the appellate Court has been rendered futile by reason of the change in the law, the appellate Court is bound to take into consideration the amended law.

19. The principle is that the Court of appeal is not a Court of error but is a Court pi rehearing, and the decree or order that it passes is passed in the suit or other proceeding instituted in the trial Court, and the decree or order passed by the trial Court is merged into the decree or order of the appellate Court. In other words, when the appellate Court decides an appeal, it decides the suit itself. Therefore, where the period of limitation prescribed for the institution of the suit is changed

with retrospective effect so as to apply to pending suits, appeals or revisions, the intention is that an appellate or revisional Court in deciding an appeal or revision and passing a final order in the suit shall take into account the changed law of limitation and decide the case accordingly.

20. Reliance was placed by learned counsel for the respondent upon certain observations made by my brother Kidwai in Beni v. Mt. Bhagana, I. L. R. (1949) ALL. 130. In this case the suit had been instituted in the civil Court by a tenant for recovery of possession over certain plots forming part of his holding describing the defendant as a trespasser. No plea of jurisdiction was raised in either of the Courts below but was raised in second appeal in this Court. The argument advanced was that the suit should have been filed in the revenue Court under Section 180, U. P. Tenancy Act.

21. My brother Kidwai pointed out that in the Full Bench decision of the late Oudh Chief Court, Orilal v. Ganeshi, 22 Luck. 48 : (A. I. R. (34) 1947 Oudh 104 F. B.), it had been laid down that Section 180, U. P. Tenancy Act, did not cover a case of a suit by a tenant against a person alleged by him to be trespasser. It was, then, argued that Section 180 had been amended by Act X [10] of 1947 and under the amendment a suit could be filed even by a tenant under Section 180 of the Act and it was in connection with this that my brother Kidwai observed :

'An alteration of the law of procedure has immediate effect but it will not have retrospective effect to deprive the decree of a Court which had jurisdiction when the decree was passed, of all effect, i. e., retrospective effect will not be given to a statute amending the law of procedure in such a manner as to affect rights which have already vested in any one by reason of a decree.

An appeal is in a sense a continuation of the suit but the function of a Court of appeal is only to see whether the decision of the lower Court is correct and for this purpose it is the law which is applicable when the decree is passed that must be considered. A change in the law will only be considered if it is given retrospective effect or if, by reason of the change, the decree will become infructuous if it is allowed to stand. In the present case retrospective effect has not been given to the amendments made by Act X [10] of 1947 and the decree already passed will not

become infructuous, Consequently the decree passed by the lower Courts with jurisdiction cannot be set aside because under the altered law they would not have jurisdiction to entertain the suit.'

22. It is clear that Section 31 of Act X [10] of 1947 was not referred to by counsel in his argument before my brother Kidwai, for the simple reason that that section applies to suits, appeals or revisions filed under the U. P. Tenancy Act in the revenue Courts, and does not apply to suits filed in a civil Court. The case before my brother being a case which had been instituted in the civil Court, the matter was argued and had to be decided upon the general principles of law apart from Section 31. My brother held, and if I may say so with great respect, correctly that since the law was not retrospective in operation so as to affect suits filed in the civil Court, decrees passed by the Courts below could not be upset because during the pendency of the appeal the law had been amended. There is nothing in the observations made by my brother that can be said to advance the appellant's case in the present appeal.

23. My answer to the first question referred to us is 'yes' if the suit is pending on the date when the Amending Act 1947 came into force, and my answer to the second question is 'yes'.

Kidwai, J.

24. I agree.

Chandiramani, J.

25. I agree.

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