

Halkibai Vs. State

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Court : Madhya Pradesh

Decided On : Dec-20-1956

Reported in : AIR1957MP93; 1957CriLJ853

Judge : Sen and ;Bhutt, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 523, 524 and 524(1); Specific Relief Act, 1877 - Sections 42; Limitation Act, 1908 - Schedule - Article 14; [Evidence Act, 1872](#) - Sections 145

Appeal No. : First Appeal No. 136 of 1953

Appellant : Halkibai

Respondent : State

Disposition : Appeal allowed

Judgement :

1. This is the plaintiff's appeal from the decree of the Court of the Additional District Judge, in Civil Suit No. 10-A of 1951, dismissing her suit for declaration of her ownership in respect of certain valuables. .

2. Plaintiff Haiti Bai is a child widow since 1904 A. D. Her parents-in-law also died in the year 1905 A. D. She was a teacher in a Girl's Primary School, from the year 1910 to 1947 when she retired on a monthly pension of Rs. 24-14-0. One

Narhadabai was a peon in her school at Waraseoni for about a year and half before her demise on 14-4-48. The plaintiff was possessed of gold and silver ornaments detailed in Schedule A(i) of the plaint, together with Rs. 6,665-13-0 in cash. It is also not disputed that she deposited gold and silver ornaments and Rs. 1,000 with Ramnathrao and Rs. 5,565-13-0 with Rajmal Suraria, retaining Rs. 100 with herself. Proceedings in respect of these articles were however, started under Section 523 of the Code of Cr. P. C., on the suspicion that they belonged to Narbadabai and were dishonestly received by the plaintiff. After a preliminary enquiry by the Sub-Divisional Magistrate, the articles were seized by the Station House Officer, Waraseoni on 3-9-48. The plaintiff put in her claim to the articles before the Sub-Divisional Magistrate, but ultimately did not prosecute the proceedings and instituted (sic) articles. Accordingly on the order of the District Magistrate, Balaghat, the ornaments were directed to be sold and the sale price to be credited to Government under Section 524 (i), Cr. P. C. It, however, appears that the sale was not actually held as directed, as in the meantime, an order of stay was passed by the lower Court.

3. Ramnanhrao and Rajmal Surana were impleaded in the suit as defendants 2 and 3. They were, however, discharged by the lower Court as they did not claim any interest in the articles deposited with them. The suit was accordingly contested by the State Government only.

4. An objection was taken by the State Government to the maintainability of the suit on the ground that as the plaintiff had failed to prosecute her claim before the Sub-Divisional Magistrate, the articles automatically vested in the State Government under Section 524(i) of the Code of Cr. P., and the order passed by the District Magistrate became final as no appeal was preferred against it under Section 524 (2) *ibid*. It was also pleaded that the suit was barred under Article 14, Schedule I of the Indian Limitation Act, 1908, as it was instituted more than one year after the date of the seizure of the articles. Both these contentions have no force.

The order made under Section 524(i) did not determine the right to the articles finally. In spite of that order, therefore, the rightful claimant was entitled to institute

a suit for declaration of his ownership, see *Queen Empress v. Tribhovan. Manekchand*, ILR 9 Bom 131 (A) and *Wasappa v. Secy. of State*, ILR 40 Bom 200: (AIR 1915 Bom 227) (B), As regards the plea of limitation, the seizure of the articles was only an act for the benefit of the rightful claimant. Such act is not, therefore, necessary to be set aside, and consequently Article 14, Schedule I of the Indian Limitation Act, is no bar to the institution of the suit within the ordinary period of limitation.

5. It was also contended on behalf of the State Government before the lower Court that the claim for a mere declaration was not tenable as it was necessary for the plaintiff to sue also for possession of the articles. This contention also is groundless. As already stated, the seizure was for the benefit of the rightful claimant and, therefore, it cannot be urged that the plaintiff was dispossessed of the articles. It was, therefore, only necessary for her to establish her title on the strength of which she would be entitled to claim the articles from the State Government.

6. The only question, therefore, is whether the plaintiff is the owner of the articles. In her deposition she has given the history of their acquisition. According to her, she came in possession of the gold and silver ornaments left by her parents-in-law. Subsequently she sold the house and other movables left by them and collected an amount of Rs. 2,500 to Rs. 3,000 from the sale proceeds. She then took education and joined service in 1910. She started on Rs. 20 per month and rose up to Rs. 50 per month at the time of her retirement.

During her service also she made some saving and prepared therefrom some more gold and silver ornaments. It is true that she was only a girl at the time her parent-in-law died, but this is not sufficient to discredit her testimony, as her affairs were then looked after by her own parents and she was likely to be aware of them. She also examined Harnath Pujari (P. W. 3) and Hukumchand (P. W. 4), Proprietor of a Rice Mill, to prove that she used to wear ornaments on her person.

She also examined Harishankar (P. W. 2) and Laxminarayan (P. W. 5) who depose that on a search having been made at the house of Narbadabai on her demise, only sundry articles and cash of Rs. 25 were found which were spent on

her obsequies. Shantilal (P. W. 6) is a business man and a member of the Legislative Assembly. He testified to the fact that when prior to her retirement, the plaintiff was transferred from Waraseoni, she had deposited with him her box containing gold ornaments weighing about 500 Tolas and about 5,000 in currency notes. These circumstances indicate her capacity to own the articles in suit.

7. Narabadabai, as the evidence shows, was a woman of poor means and before she became a peon, she was living on alms. It is, therefore, not possible that she could have possessed any valuables. As the articles were admittedly in possession of the plaintiff, and as the alternative plea that they belonged to Narabadabai, is, prima facie, untenable, there would be no reason to disbelieve her as to her ownership of the articles, unless her previous statement before the Sub-Divisional Magistrate, Ex. D-4, can be used against her. At that time, she is alleged to have admitted Narabadabai's ownership of the articles.

Other statement, however, was not interpreted to her and admitted by her 'to be correct. It was not also made during the course of any judicial enquiry which, under Section 523, Cr. P. C., could start only after seizure of the articles. The statement, therefore, required proof, The Magistrate who is said to have recorded her statement was not examined as a witness. And no other proof of the statement has been furnished in the case. So far as the plaintiff is concerned she categorically denied having made the alleged statement. The evidence led by her on the point of her ownership of the articles, therefore, stands uncorroborated (sic -- uncontradicted). It must, therefore, be held that the articles in suit belonged to the plaintiff.

8. The appeal is accordingly allowed, the decree of the lower Court dismissing the suit with costs is set aside and it is declared that the articles mentioned in Schedule A (i), (ii) and (iii) of the plaint belonged to the plaintiff. Costs of both the Courts shall be on the State Government.