

Ramnarayan Singh Vs. Kubera Sahu

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Court : Orissa

Decided On : Jan-19-1961

Reported in : AIR1962Ori100

Judge : S.P. Mohapatra, J.

Acts : Limitation Act, 1908 - Sections 14; Patna State Tenancy Act, 1944 - Sections 85; Tenancy Law

Appeal No. : Second Appeal No. 161 of 1959

Appellant : Ramnarayan Singh

Respondent : Kubera Sahu

Advocate for Def. : G. Rath, Adv.

Advocate for Pet/Ap. : A.K. Tripathy, Adv.

Disposition : Appeal allowed

Judgement :

S.P. Mohapatra, J.

1. The plaintiff has brought this second appeal against the reversing judgment of the lower appellate Court arising out of a suit for declaration of title and for recovery of possession. The plaintiff is the recorded tenant in respect of Khata No.

13 and the disputed land appertains to plot No. 1156 with an area of Order 12 of the said khata of the village Kandajuri. The allegation of the plaintiff is that the defendant constructed a house on the disputed land on 7th May 1943 which serves as the cause of action for the suit for ejectment. The relevant point for discussion before us is the point of limitation. The suit was filed on 19th December 1956. Indeed the suit is barred under Article 144 of the Indian Limitation Act. B the relevant facts necessary to bring the point are as follows:

On 18th April 1945 the plaintiff filed his case in the Revenue Court under the provisions of Section 85 of the Patna State Tenancy Act, 1944. The matter was heard; but the Sub-divisional officer passed an order on the 1st December 1955 to the effect that the matter was to be decided in the Civil Court on account of which the suit was filed on 19th December 1956. The plaintiff claims for on exclusion of the time taken by the proceedings before the Revenue Court relying upon the provisions of Section 14 of the Limitation Act in order to save limitation of the present suit.

2. The position is clear and is accepted by both the parties that if this period taken in the proceedings before the Revenue Court is excluded, the suit is within time otherwise the plaintiff has got to be non-suited as being hit by the mischief of the point of limitation. The only question for determination is whether the case can be covered by Section 14 of the Limitation Act which runs as follows;

'14. (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 proceeding, whether in a court of first instance or in a court of appeal, against the defendant shall be excluded where the proceeding is found upon the same cause of action and 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'.

On a perusal of the order of the Sub-divisional Officer and also the plaint and the judgment of the lower appellate Court it is clear to me that the present suit is based upon the selfsame cause of action, the relief claimed being ejectment. The same relief was also claimed before the Sub-divisional Officer relying upon the provisions of Section 85 of the tenancy law of the locality; the cause of action there

being also dispossession of the plaintiff. In my view, there cannot be any suggestion whatsoever that the proceeding taken before the Sub-divisional Officer was not in good faith. It was indeed with due diligence prosecuted and it was only after the final order was passed that the plaintiff has come with the present suit,

3. The main points of dispute as to the applicability of Section 14 of the Limitation Act are whether the Revenue Officer before whom the proceedings were started can be taken to be a Court as contemplated under Section 14 of the Limitation Act, and further whether proceedings before him can be termed as 'Civil Proceedings' as used in Section 14. On the first question, as to whether the Sub-divisional Officer, who had passed the order and who had indeed the power to take cognizance of the petition, can be termed to be a court or purely an administrative officer passing the order in the discharge of his administrative function, or even as quasi Judicial Tribunal. The 8 sections of the Patna State Tenancy Act are relevant for our purpose. They are Sections 85, 94 and 99. Section 85 runs as follows:

'Section 85. Any person who dispossesses a recorded tenant except under the provisions of this Act on the application made by such recorded tenant shall be ejected from the land trespassed upon and may be fined by the Revenue Officer not exceeding 10 times the rent of the land from which the tenant was dispossessed subject to a minimum of Rs. 10/- and may also be declared to have committed criminal trespass within the meaning of the Indian Penal Code;

Nothing in this section shall preclude the trespasser from establishing his title to the land in a Civil Court.'

Section 85 empowers the Revenue Officer to restore possession to the recorded tenant who has been dispossessed. Section 94 runs thus:

'94. In all cases instituted or applications made in a Revenue Court the application shall in addition to the particulars mentioned in Order VII, Rule 1 of the C. P. C. specify the area and number of the holding, and when the land to which the case relates comprises part of plot number, an accurate and sufficient description of the land and its boundary, and in the case of application for recovery of arrears the

amount of yearly rent and cesses, the instalments in which it is payable and the year in which the arrears accrued and it shall also be accompanied by a copy of the Khatian in respect of the holding'.

This indicates clearly that all the necessary particulars and details for determination of a question contemplated under Section 85 have got to be supplied by the party who approaches the officer to initiate proceedings. But the decisive provision in this respect is contained in Section 90. This section gives exclusive jurisdiction to the Revenue Officer in many matters and oust the; jurisdiction of the Civil Court through the provisions contained in Clause (xxiii) requiring to the effect 'power of Revenue Officer to eject or impose penalty on the persons possessing homestead land without the permission of the Thekadar or of the Revenue Court under Section 85'. It is definitely made clear in this provision that the Officer exercising power under Section 85 is termed by this piece of legislation as a Revenue Court.

In my view, the language of the provisions contained in this section of the statute is clear enough to dispel any doubt on the point of controversy and I am to conclude that under the provisions of this statute the Officer discharging his duties under Section 85 of the Tenancy Law is a Court. In this view of the matter it is not permissible to enquire further as to what exactly the reasons are to term any other Tribunal as a Court In spite of the position that the Tribunal may be doing quasi judicial function.

I may observe that on an examination o the scheme of the Act and the duties imposed upon the Revenue Officer, the. Revenue Officer is competent and is also bound to enquire into the point of dispute between the parties before him and to pass an order of an authoritative and binding nature which manifestly appears to be a judicial order after a judicial enquiry. In my view, therefore, the sub-divisional officer, while passing the order under Section 85 of the Tenancy law, was a Court and the proceedings before him were proceedings before a Court as contemplated under Section 14 of the Limitation Act.

4. A further question still remains to be decided whether the proceedings before the Revenue Officer can be termed to be Civil Proceedings. I have been referred

to a Bench decision of this Court reported in Jagannath Agarwalla v. State of Orissa, (S) AIR 1957 Orissa 42. Indeed the questions arose in that case were not based on the self-same facts as in the instant case. But the meaning of the expression 'judicial proceeding' was discussed and explained there. There the petitioner had laid a claim for recovery of a sum of rupees more than a lakh against the State of Orissa on the merger of the ex-State of Mayurbhanj with the State of Orissa on the basis of a contract between himself and the ex-Ruler in the capacity as the Head of the State of, Mayurbhanj in an O. J. C. proceeding under Article 226 of the Constitution. It was held in that case the claim undoubtedly was of a civil nature and the proceeding terminating the dispute was to be deemed as a Civil proceeding. The observation was to the effect. :

'This is purely a claim in assertion of a Civil right, and the proceeding, in enforcement of the Civil right, is a Civil Proceeding'.

The meaning of the expression 'Civil proceeding' as appears in Stroud's Judicial Dictionary may be quoted here;

'a process for the recovery of individual right Or redress of individual wrong, inclusive in its proper legal sense, of suits by the Crown'.

Without discussing the matter any further and following the reasons behind the decision quoted above I may observe that this is clear also that in the previous proceedings the relief sought was purely of a civil nature for ejection of a trespasser, the proceedings having been started at the instance of the recorded tenant. It may be noted that proceedings of such nature are contemplated in almost all the tenancy Acts in India and it is needless to reiterate that the proceedings of this nature under the tenancy law before the revenue authorities are Civil proceedings and the revenue authorities who grant relief to the aggrieved parties in accordance with the provisions of the tenancy laws exercise their judicial powers and hold enquiries as Courts. In these circumstances, therefore I am of the view that the plaintiff is entitled to the protection under Section 14 of the Indian Limitation Act and as I have mentioned above, if this period between 18th April 1945 and 1st December 1955 is excluded then the plaint is clearly within time.

5. In conclusion, therefore, the appeal succeeds, the suit is decreed, the judgment and decree of the lower appellate Court are set aside and the judgment and decree of the trial court are restored. Parties are to bear their own costs throughout.

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