

Mubarak Hussaln Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Oct-11-1965

Reported in : AIR1967Raj14

Judge : I.N. Modi and; V.P. Tyagi, JJ.

Acts : Limitation Act, 1908 - Schedule - Articles 62 and 96; [Motor Vehicles Act, 1939](#); Contract Act - Sections 65

Appeal No. : First Appeal No. 7 of 1958

Appellant : Mubarak Hussain

Respondent : State of Rajasthan

Advocate for Def. : B.C. Chatterji, Adv.

Advocate for Pet/Ap. : B.B. Desai, Adv.

Disposition : Appeal dismissed

Judgement :

Modi, J.

1. This is a civil regular first appeal by the plaintiff Mubarak Hussain against the judgment and decree of the Senior Civil Judge, Jodhpur, dated 31st August, 1957, in a suit for refund of money.

2. The plaintiffs case is briefly this. The plaintiff Mubarak Hussain (along with two other persons named Bhanwarlal and Kanwalchand, who may be ignored for the purposes of the present appeal as we consider it unnecessary to go into the question whether they were joint monopolists with the plaintiff) obtained a monopoly contract for plying passengers and goods motor service for hire on the Erinpura-Bali route for a period of three years from 15th March, 1949 to 14th March, 1952 from the Board of Communications of the Government of the State of Jodhpur, as it then was on agreeing to pay a sum of Rs. 33,101/- for the said monopoly (vide Ex A-1). On the 7th April, 1949, the State of Jodhpur was integrated with the United State of Rajasthan and the monopoly contract was allowed to continue by the new State. On the 26th January, 1950, the Constitution came into force in our country and the United State of Rajasthan became one of its Part B States. The plaintiff's case is that after the Constitution had come into force, the monopoly contract held by him had become unlawful and null and void and it was open to every citizen to conduct the business of carrying passenger and goods on hire by motor vehicles throughout the length and breadth of the State until the 1st April, 1951 when the Indian [Motor Vehicles Act, 1939](#) (Act No. 4 of 1939) was made applicable to the State of Rajasthan and then a business of this character fell to be regulated by the provisions contained in that Act and no one could carry on such a business except under a permit obtained under the provisions of the said Act.

The plaintiff's grievance was and is that under the circumstances the defendant State had no right to recover any money in connection with the contract held by him at law as the same had become wholly null and void after the 26th of January, 1950, on the coming into force of the Constitution and it became virtually impossible for the plaintiff to continue the monopoly as such after the 1st of April, 1951 as a result of the Indian Motor Vehicles Act having been made applicable to the State, and yet the State continued to recover from him various amounts in lieu thereof from time to time aggregating in all to a sum of Rupees 13,050/- by illegal pressure or coercion, and by threat of proceedings under the Public Demands Recovery Act up to 31st March, 1951. The plaintiffs claim, therefore, is, that he is entitled to a refund of the sum of Rs. 13,050/- from the State paid by him, under circumstances mentioned above. On the 11th of February, 1954, the plaintiff gave

the requisite statutory notice under section 80 of the Code of Civil Procedure for return of the aforesaid amount to him, but without any avail, and consequently he brought the present suit for the recovery of Rs. 15,400/- including principal and interest in the court of the Senior Civil Judge. Jodhpur on the 24th of January, 1956.

3. The, defendant State resisted the suit. The stand taken by it was that the plaintiff had fully enjoyed the benefit of the monopoly contract upto the 31st of March, 1951 and therefore he was not entitled to any refund of the amounts paid by him to the State from the 26th January, 1950 to the 31st March, 1951. It was also contended that the contract had neither been frustrated nor had it become null and void. Lastly, it was pleaded that the suit was in any case barred by limitation.

4. The trial court held that after the Constitution had come into force on the 26th of January, 1950, the defendant State had no power to realise any tax without the authority of law and consequently the defendant was not entitled to realise the money in dispute from the plaintiff. It also held that the monopoly contract could not survive after the Constitution had come into force and, therefore, it became null and void with effect from that stage. On the question of limitation, the trial court held that the suit was governed by Article 62 of the Indian Limitation Act, 1908, and that is the law which would still govern the case and, therefore, the suit is clearly barred by time.

5. Aggrieved by this decision, the plaintiff has come up in appeal to this Court

6. The principal question which arises for determination in this appeal is whether the trial court rightly applied Article 62 of the Limitation Act for, if the plaintiff's suit does fall within the ambit of that article, it cannot but be dismissed as having been brought beyond the three years' period prescribed therein.

7. Learned counsel for the plaintiff strenuously contended before us that the trial court had fallen into a serious error of law in holding that this suit falls to be governed by Article 62, and elaborated his point somewhat like this. His submission was that the money which was realised by the defendant State from

the plaintiff was in pursuance of a contract which was perfectly valid when it was entered into between the parties and, therefore, a suit brought for the refund of the moneys so paid to the State would not rightly attract Article 62 of the Limitation Act. He further contended that the payments made by the plaintiff were made under some kind of mistake which was discovered at the time he gave the notice to the State to refund the same. It was further urged in this connection that in this view of the matter the present suit would be governed by Article 96 of the Limitation Act and the limitation against him commenced when the mistake became known to the plaintiff on the 11th of February, 1954 and, therefore, the plaintiff's suit would be held to be within time.

8. On having given very careful and anxious consideration to the submissions made to us on behalf of the plaintiff, we have come to the conclusion that the present suit is rightly governed by Article 62 of the Limitation Act. The principal reason which has induced us to come to this conclusion is that this is the only view possible on the averments made by the plaintiff himself in his plaint. As we have already adverted to, his positive case in the plaint was that as soon as the Constitution came into force on the 26th of January, 1950, monopolies like the one with which we are concerned could not be sustained and it became open to, indeed it was the fundamental right of, any other citizen to ply his buses for carrying passengers and goods for hire on the route on which the plaintiff held his monopoly as much as it was so open to the plaintiff. Indeed, it is established law in our Court that the Constitution adversely affected all such monopolies held by various persons under the old dispensations in the various covenanting States which were integrated into the State of Rajasthan. That being so, the monopoly contract held by the plaintiff came to an end although it appears that he continued to enjoy it until the 31st of March, 1951, when the Indian Motor Vehicles Act (Act No. 4 of 1989) was made applicable.

Now the plaintiff does not dispute any payments made by him in connection with his contract until the 25th of January, 1950 and the only dispute raised by him pertains to the payments made from the 26th of January, 1950 to the 31st of March, 1951. As for these payments, the case put forward by the plaintiff without any ambiguity or equivocation is that the State had no authority in law to recover it

and, therefore, he was entitled to a refund of the moneys paid by him during this period and which payments had been exacted from him by undue pressure, coercion and by threats of recovery by resort to the provisions of the Public Demands Recovery Act. Can it be said in such circumstances that these payments had been made by him in fulfilment of a subsisting contract? The answer to this question cannot but be in the negative. As we look at the matter, either these payments were made in the performance of a subsisting contract or not. If they were made in fulfilment of a contract which was good then there could be no valid objection to the making or exacting of such payments by the party entitled to payment. If, however, there was no such subsisting contract, then it would be a contradiction in terms to say that the payments in question had been made by the plaintiff in performance thereof. As we look at the case propounded by the plaintiff in his plaint, the position taken up by him unmistakably is that the contract had come to an end on the 26th of January, 1950 on the doctrine of frustration and, therefore, it became dead or extinct. There can, therefore, be no question of any payments being exacted by the State in performance of a contract which was no longer good or subsisting. In other words the payments made by the plaintiff from the 26th of January, 1950, upto the 31st of March 1951, were payments which the defendant State had no right to receive in law. We hold accordingly.

9. If the conclusion to which we have come above is correct, and we have no doubt that that is so, then the further question is whether the plaintiff can avoid the application of Article 62 of the Limitation Act to his case. We think, not.

10. The question of the true interpretation of Article 62 (which pertain to suits for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use) arose in *Jain Bros. And Co., v. State of Rajasthan*, ILR (1963) 13 Raj 1068; (AIR 1964 Raj 17) to which one of us (Modi J.) was a party. After a fairly elaborate discussion of the somewhat conflicting judicial opinions existing on this subject, the law was summed up as follows:

'Our conclusion, therefore, on a most careful and earnest consideration that we are able to give to this vexed matter is that we find it difficult to escape the view, on the whole that the correct interpretation to be put on the key words in Article 62

is the one which should conform to the meaning of these words in the English cases and that a simple or literal interpretation of these words which appear to us to be clearly technical as discussed above would not be correct. That being so, it must follow that Article 62 governs suits for money had and received not only where the defendant may have actually received money for the use of the plaintiff as his agent or in a like capacity, but it also governs suits for money where of it can be rightly postulated that the defendant has received money which he had no right to receive and the receipt whereof by the defendant therefore amounts in law or by a legal fiction to a receipt by him for the plaintiff's use. Further, as Article 62 is a general article for this class of suits, that is, for money had and received, it must give way where a suit of this nature is specially provided for such as under Articles 87, 96, 97 or the like of our Limitation Act. We hold accordingly. It must further follow on this view that Article 120 which is a residuary article cannot be attracted to such cases. We should also like to point out here that once we come to the conclusion that Article 62 so interpreted correctly applies to cases of this type, there can be hardly any warrant for taking a different view on the mere ground that another, and, what is called, a more strict interpretation of this Article should be adopted because that would give a longer period of limitation to the plaintiff and therefore more suits would be saved from the bar of limitation thereby. Finally we should also like to add that if that is not the correct interpretation to put on Article 62, which interpretation, if we may say so with all respect, is in conformity with the preponderance of judicial opinion in our country, it is for the Legislature to intervene and express its intention more clearly than seems to have been done at the present moment.'

If we may say so with respect, we are in entire agreement with this view.

11. Learned counsel for the plaintiff, however, strenuously contended that the case before us is distinguishable from the Jain Brothers' case, ILR (1963) 13 Raj 1063: (AIR 1964 Raj 17) because here the money in dispute had been realised by the State from the plaintiff in performance of a contract and not in violation of any statute as in that case. This, in our opinion, makes no difference in principle as the fiction of an illegal payment having been exacted within the meaning of Section 65 arises in this class of case as in the other. It is the plaintiff's own case that no

monopoly could possibly be sustained after the Constitution came into force on the 26th of January, 1950. Further, assuming that the suit money pertained to the performance of a contract which had been validly entered into between the parties concerned, that contract, according to the plaintiff himself, stood wholly and, in our opinion, rightly frustrated as a result of the coming into force of the Constitution, and consequently it is impossible to accept that any money was recoverable from the plaintiff in pursuance of a contract which was no longer subsisting and which for all practical purposes was extinct. It is impossible to escape the conclusion in such circumstances that any payment from the plaintiff to the defendant in connection with such a contract could not be accepted as being lawful and it must follow that the State had no authority in law to exact the same from the plaintiff. Of an action like this, we have no doubt that it can be correctly postulated that the money which was exacted by the defendant from the plaintiff was money which was received by the defendant for the plaintiff's use within the meaning of Article 62 of the Limitation Act, and it must further follow on the language of that article that this money was immediately returnable to the plaintiff, that is, at the very time of its receipt. It is conceded before us by learned counsel for the plaintiff that the various amounts paid by his client from time to time and for the refund of which the present suit was brought were made well before 31st of March, 1951. In this view of the matter, we are clearly of the opinion that the trial court was perfectly correct in dismissing the plaintiff's suit on THE ground of limitation.

12. Learned counsel for the plaintiff made a desperate endeavour to get out of this position by asking us to accept that the payments made by his client from time to time were made under a mistake and, therefore, the correct article to apply would be Article 96 which reads as follows:

Description of suit.

Period of limitation.

Time from which period begins to run.

96. For relief on the ground of mistake.

Three

years.

When the mistake becomes known to the plaintiff.

13. It was further pressed upon us in this connection that, as this article stood, it covered both mistakes of law as well as fact. That may be so. We are, however, entirely unable to accept the submission of learned counsel that the present case was founded on the plea of mistake. The entire tenor of the plaintiff's case, as disclosed in his plaint, negatives this submission. Nowhere is it said therein that the payments made by the plaintiff were made under mistake. No issue was raised or invited on this point, during the course of trial. To allow the plaintiff to set up a new case, on a point like this, which, as we look at it, is essentially one of fact in the circumstances of the case would be to take the defendant by complete surprise, and we are not prepared to allow this to be done.

There would be a further difficulty in the way of the plaintiff for successfully overcoming the bar of limitation because the question would still arise when the mistake became known to the plaintiff. We asked learned counsel to place his finger on his plaint and tell us when, according to it, the mistake became known to the plaintiff. He was obviously unable to give any satisfactory reply for the plaint is absolutely silent on the point, and all that he was able to tell us was that the mistake became known to the plaintiff when he gave the notice under Section 80 to the State, or, alternatively, he argued that it was for the defendant to prove that the mistake became known to the plaintiff before three years of the institution of the suit. We are unable to accept any of these contentions. So far as the first point is concerned, if we were to accept a view like that, it would be absolutely at the pleasure of the plaintiff to give a notice under Section 80 whenever it suited him to do so, may be after a dozen years of the payment having been made, but by no stretch of reasoning he could be allowed to take advantage of his own laches.

As for the second point, it clearly seems to us that the point of time when the plaintiff came to know of the mistake under which he had made the disputed payments must be a matter within his special knowledge, and under Section 100

of the Evidence Act, it would be for the plaintiff to establish a point like this, rather than for the defendant for whom it would be hardly possible to read the mind of the plaintiff with any precision. Again, as we look at the matter, the plaintiff was in enjoyment of his monopoly rights, rightly or wrongly, until the 31st of March, 1951 or a few days thereafter and admittedly his monopoly was terminated early in the month of April, 1951. We have no doubt therefore that he should have certainly discovered soon after that that the payments made by him upto the 31st March, 1951 were under a mistake, and we cannot possibly accept the view that this realisation came to him as late as the 11th February, 1954. Counting from the date of the discovery of the mistake, thus deductible, the suit would again be clearly barred by time.

14. Before we conclude, we might as well refer to a subsidiary argument, which was raised by learned counsel for the plaintiff, that his suit was brought under Section 65 of the Contract Act which lays down that when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

15. We do not see how this provision can come to the aid of the plaintiff, for it has and can have no bearing on the question of limitation applicable to the plaintiff's suit. It is correct that the contract between the parties in this case did become void, or let us say was discovered to be void later, but the question still remains when it was discovered to be void the plaintiff is wholly silent on the point. As we are inclined to think, the contract became void on the coming into force of the Constitution on the 26th of January, 1950, and must have also been discovered to be void at that very time, for the Constitution on this point spoke with no uncertain voice and it was hardly a matter of such legal complexity that the plaintiff or his legal advisers should not have been in a position to ascertain the correct state of law. In this view also the plaintiff cannot escape the bar of limitation.

16. For the reasons mentioned above, this appeal fails and is hereby dismissed. Under the circumstances, we make no order as to costs of this appeal.

